

IN THE UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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In re : Chapter 11  
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DPH HOLDINGS CORP., et al., : Case No. 05-44481 (RDD)  
:  
Reorganized Debtors. : (Jointly Administered)  
:  
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AFFIDAVIT OF SERVICE

I, Darlene Calderon, being duly sworn according to law, depose and say that I am employed by Kurtzman Carson Consultants LLC, the Court appointed claims and noticing agent for the Reorganized Debtors in the above-captioned cases.

On September 30, 2010, I caused to be served the document listed below (i) upon the party listed on Exhibit A hereto via overnight mail, (ii) upon the parties listed on Exhibit B hereto via electronic notification, and (iii) upon the party listed on Exhibit C hereto via postage pre-paid U.S. mail:

Reorganized Debtors' Designation of Additional Items to be Included in Record on Appeal in Appeal by Michigan Funds Administration (Docket No. 20648) [a copy of which is attached hereto as Exhibit D]

Dated: October 5, 2010

/s/ Darlene Calderon

Darlene Calderon

State of California  
County of Los Angeles

Subscribed and sworn to (or affirmed) before me on this 5<sup>th</sup> day of October, 2010, by Darlene Calderon, proved to me on the basis of satisfactory evidence to be the person who appeared before me.

Signature: /s/ Michelle Cruz

Commission Expires: 1/2/14

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UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

	X
	:
In re	:
	Chapter 11
	:
DPH HOLDINGS CORP., <u>et al.</u> ,	:
	Case No. 05-44481 (RDD)
	:
Reorganized Debtors.	:
	(Jointly Administered)
	:
	X

REORGANIZED DEBTORS' DESIGNATION OF ADDITIONAL ITEMS  
TO BE INCLUDED IN RECORD ON APPEAL IN APPEAL BY  
MICHIGAN FUNDS ADMINISTRATION

In accordance with rule 8006 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), DPH Holdings Corp. and certain of its affiliated reorganized debtors in the above-captioned cases (collectively, the "Reorganized Debtors"), hereby submit their designation of additional items to be included in the record on appeal in the Michigan Funds Administration appeal from this Court's Order Pursuant To 11 U.S.C. § 503(b) And Fed. R. Bankr. P. 3007 (I) Disallowing And Expunging Proof Of Administrative Expense Claim Number 19168 Filed By Michigan Funds Administration And (II) Denying Amended Request For Payment Of Administrative Expense On Behalf Of The Michigan Funds Administration, dated September 9, 2010 (Docket No. 20583) (the "Order").

1. On September 16, 2010, the Michigan Funds Administration filed a Notice Of Appeal (Docket No. 20597) from the Order, as well as a Statement Of Issues And Designation Of Record On Appeal (Docket No. 20598).

2. In accordance with Bankruptcy Rule 8006, the Reorganized Debtors designate the following additional items to be included in the record on appeal:

Designation No.	Date	Docket No.	Description
D-1	6/16/2009	17032	Order (A)(I) Approving Modifications To Debtors' First Amended Plan Of Reorganization (As Modified) And Related Disclosures And Voting Procedures And (II) Setting Final Hearing Date To Consider Modifications To Confirmed First Amended Plan Of Reorganization And (B) Setting Administrative Expense Claims Bar Date And Alternative Transaction Hearing Date ("Modification Procedures Order")

D-2	7/15/2009	N/A	Proof of Claim number 19168 (undocketed <sup>1</sup> ; attached hereto as <u>Exhibit A</u> )
D-3	8/30/2010	20590	August 27, 2010 Hearing Transcript (remote electronic access is restricted until 11/29/2010 <sup>1</sup> ; a copy of the transcript is attached hereto as <u>Exhibit B</u> )

Dated: New York, New York  
September 30, 2010

SKADDEN, ARPS, SLATE, MEAGHER  
& FLOM LLP

By: /s/ John K. Lyons  
John Wm. Butler, Jr.  
John K. Lyons  
Ron E. Meisler  
155 North Wacker Drive  
Chicago, Illinois 60606

- and -

Four Times Square  
New York, New York 10036

Attorneys for DPH Holdings Corp., et al.,  
Reorganized Debtors

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<sup>1</sup> With exceptions not relevant here, "a party filing a designation of items to be included in a record on appeal shall cause to be filed on the CM/ECF system, unless previously filed, a copy of each item designated and attached to the designation." Bankr. S.D.N.Y. R. 8007-1(a).

Exhibit A

<p>United States Bankruptcy Court Southern District of New York Delphi Corporation et al. Claims Processing c/o Kurtzman Carson Consultants LLC, 2335 Alaska Avenue El Segundo, California 90245</p>		<p>Administrative Expense Claim Form</p>	
<p>Debtor against which claim is asserted: Delphi Corporation, et al. 05-44481</p>		<p>Case Name and Number In re Delphi Corporation, et al. 05-44481 Chapter 11, Jointly Administered</p>	
<p><b>NOTE:</b> This form should not be used to make a claim in connection with a request for payment for goods or services provided to the Debtors prior to the commencement of the case. This Administrative Expense Claim Request form is to be used solely in connection with a request for payment of an administrative expense arising after commencement of the case but prior to June 1, 2009, pursuant to 11 U.S.C. § 503.</p>			
<p>Name of Creditor <i>(The person or other entity to whom the debtor owes money or property)</i> Michigan Funds Administration</p>		<p><input type="checkbox"/> Check box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars. <input type="checkbox"/> Check box if you have never received any notices from the bankruptcy court in this case. <input type="checkbox"/> Check box if the address differs from the address on the envelope sent to you by the court.</p>	
<p>Name and Address Where Notices Should be Sent Dennis J. Raterink, Asst. Atty General Labor Div, P O Box 30736 Lansing, MI 48909 Telephone No. (517) 373-1176</p>		<p>Claim #19168 USBC SDNY Delphi Corporation, et al. 05-44481 (RDD)</p>	
<p>ACCOUNT OR OTHER NUMBER BY WHICH CREDITOR IDENTIFIES DEBTOR:</p>		<p>Check here if this claim <input type="checkbox"/> replaces <input type="checkbox"/> amends a previously filed claim, dated: _____</p>	
<p>1. BASIS FOR CLAIM</p> <p><input type="checkbox"/> Goods sold <input type="checkbox"/> Services performed <input type="checkbox"/> Money loaned <input type="checkbox"/> Personal injury/wrongful death <input checked="" type="checkbox"/> Taxes <input checked="" type="checkbox"/> Other (Describe briefly) Workers' compensation funds assessments</p>		<p><input type="checkbox"/> Retiree benefits as defined in 11 U.S.C. § 1114(e) Wages, salaries, and compensation (Fill out below) Your social security number _____ Unpaid compensation for services performed from _____ (date) to _____ (date)</p>	
<p>2. DATE DEBT WAS INCURRED 2008</p>		<p>3. IF COURT JUDGMENT, DATE OBTAINED:</p>	
<p>4. TOTAL AMOUNT OF ADMINISTRATIVE CLAIM: \$ 1,130,191.92</p> <p><input type="checkbox"/> Check this box if claim includes interest or other charges in addition to the principal amount of the claim. Attach itemized statement of all additional charges.</p>			
<p>5. Brief Description of Claim (attach any additional information): See attached memorandum and exhibits</p>			
<p>6. CREDITS AND SETOFFS: The amount of all payments on this claim has been credited and deducted for the purpose of making this proof of claim. In filing this claim, claimant has deducted all amounts that claimant owes to debtor.</p>		<p>THIS SPACE IS FOR COURT USE ONLY</p>	
<p>7. SUPPORTING DOCUMENTS: <i>Attach copies of supporting documents</i>, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, court judgments, or evidence of security interests. DO NOT SEND ORIGINAL DOCUMENTS. If the documents are not available, explain. If the documents are voluminous, attach a summary. Any attachment must be 8-1/2" by 11".</p>		<p>RECEIVED JUL 15 2009 KURTZMANCARSONCONSULTANTS</p>	
<p>8. DATE-STAMPED COPY: To receive an acknowledgement of the filing of your claim, enclose a stamped, self-addressed envelope and copy of this proof of claim.</p>		<p>Date July 14, 2009</p>	
<p>Sign and print the name and title, if any, of the creditor or other person authorized to file this claim (attach copy of power of attorney, if any)</p> <p>Dennis J. Raterink Dennis J. Raterink, Asst. Attorney General</p>			



054448109071500000000486

Dennis J. Raterink  
Susan Przekop-Shaw  
Michigan Assistant Attorneys General  
(Pro Hac Vice pending)  
P.O. Box 30736  
Lansing, MI 48909  
(517) 373-1176

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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In Re: Chapter 11  
DELPHI CORPORATION, et al. Case No. 05-44481 (RDD)  
Debtors. (Jointly Administered)

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**REQUEST FOR PAYMENT OF ADMINISTRATIVE EXPENSE ON BEHALF OF  
MICHIGAN FUNDS ADMINISTRATION**

The attached Request for Payment of Administrative Expense is filed on behalf of the Funds Administration for the State of Michigan. This request is being filed in reference to the Administrative Claim Bar Date.

The basis for the claim stems from the status of Delphi Corporation as a self-insured employer for purposes of workers' compensation claims in the state of Michigan. Delphi Corporation was first granted self-insurer status by the Michigan Workers' Compensation Agency on May 28, 1999 and continues to operate as a self-insured employer. Delphi Corporation and certain U.S. subsidiaries and affiliates filed voluntary petitions in this Court on October 8, 2005 and October 14, 2005.

Pursuant to Michigan's Workers' Disability Compensation Act (WDCA), MCL 418.551, all employers (either directly, if self-insured, or through the premium costs, if insured) who pay indemnity for wage loss to injured workers are obligated to pay assessments into the various funds that provide benefits under the WDCA to injured workers. There are three funds to which employers contribute: 1) The Second Injury Fund, (2) the Silicosis Dust Disease and Logging Fund and (3) the Self-Insurers' Security Fund (to which only self-insured employers contribute).

In the case of self-insured employers, assessments are based on the amount of indemnity paid in the preceding year.

Assessments are calculated in March of each year. Prior to that, each employer is sent a form to fill out to indicate the amount of indemnity, (wage loss benefits), paid in the preceding year and the percentage to apply to that amount to determine the amount of assessment owing to each Fund. In this instance, Delphi Corporation responded that, for the year 2008, it had paid the sum of \$24,703,648.45 in workers' compensation benefits, excluding medical, rehabilitation and funeral costs. See Exh 1.

In 2009, the Funds Administration determined the amount of Delphi's assessment for each Fund. For the Second Injury Fund, the amount was \$354,497.36. For the Silicosis Dust Disease and Logging Fund, the amount was \$34,585.11 and for the Self-Insurers' Security Fund, the amount was \$741,109.45. A total of \$1,130,191.92 was assessed for the year 2009 and remains unpaid and currently due. See Exh 2.

These assessments should be treated as administrative expenses because Delphi has been allowed to remain self-insured and it has continued to make compensation payments during the bankruptcy. These assessments are based on payments of indemnity after the petition/commencement date. Hence, the obligation to pay assessments arose after the petition/commencement date even though the underlying obligations arose prior to the petition/commencement date. Furthermore, Debtor's estate has been greatly enhanced by its ability to remain self-insured during the pendency of the bankruptcy proceedings. By remaining self-insured, Debtor has been able to avoid paying policy premiums to a private insurer to cover its substantial Michigan workers' compensation obligations.

As such, these assessments qualify as "actual, necessary costs and expenses of preserving the estate, including wages, salaries, or commissions for services rendered after the commencement of the case," pursuant to 11 U.S.C. §503(b)(1)(A).

Furthermore, these assessments should be treated as administrative expenses because the debtor is required to continue to make payments even after it has stopped being a self-insured entity. MCL 418.551(7) requires that:

An employer who has stopped being a self-insurer shall continue to be liable for a second injury fund; silicosis, dust disease, and logging industry compensation fund ; or self-insurers' security fund assessment on account of any compensation benefits . . . paid by the employer during the previous calendar year.

Federal law requires that the debtor must manage the estate in compliance with state law. 28 U.S.C. §959(b) requires a debtor in possession to:

[M]anage and operate the property in his possession as such trustee, receiver or manager according to the requirements of the valid laws of the State in which such property is situated.

Therefore, as it is in the best interests of the estate, indeed a mandatory requirement of the estate to follow State law, debtors must continue to pay its workers' compensation assessments, despite the fact that the company is no longer self-insured, and even though it enjoys the protections of Chapter 11. The cost of complying with this Michigan law should therefore be an administrative expense.

Alternatively, the assessments should be granted tax priority status. This Court has ruled on this specific issue before. In 1993, this Court held that these exact assessments, issued by the Funds Administration of the State of Michigan, are entitled to tax priority status because:

The assessments, in issue, are not fees which confer a benefit on the employer separate from the benefit for the general public. Rather the assessments are for a public purpose, to create a fund to pay workers' compensation claims, thus, benefiting the general public who does not have to then support the claimant employee.

*In re Chateaugay Corporation, et al.*, 153 B.R. 632, 638 (SDNY - 1993).

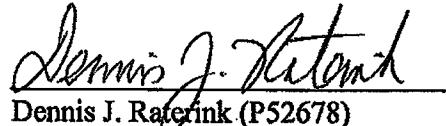
Michigan courts have also found these assessments to have the characteristic of a tax and they are for a valid public purpose. *McAvoy v HB Sherman Co*, 401 Mich 419 (1977); *Stottlemeyer v General Motors Corp*, 399 Mich 605 (1977).

WHEREFORE, the request presented on the attached form should be allowed as an administrative expense. Alternatively, the request must be allowed as a tax priority claim pursuant to 11 USC § 507(a)(8).

Respectfully submitted,

MICHAEL A. COX  
Attorney General

Dated:

  
Dennis J. Raterink (P52678)  
Michigan Assistant Attorney General  
Attorneys for Michigan Funds Administration  
P.O. Box 30736  
Lansing, Michigan 48909  
Telephone: (517) 373-1176

THE STATE OF MICHIGAN  
IN U.S. BANKRUPTCY COURT, SOUTHERN DISTRICT OF NEW YORK

IN THE MATTER OF

DELPHI CORPORATION, ET AL

CASE NO. 05-44481 (RDD)  
JUDGE ROBERT D. DRAIN

PROOF OF CLAIM FOR UNPAID ASSESSMENTS

EMPLOYER: DELPHI CORPORATION  
5825 DELPHI DRIVE  
TROY, MI 48098

	STATUTE	ASSESSMENT DATE	ASSESSMENT PERIOD COVERED	ASSESSMENT DUE
SIF	MCL 418.551(1)	06/25/09	01/01/09 thru 12/31/09	\$354,497.36
SDDF	MCL 418.551(2)	04/30/09	01/01/09 thru 12/31/09	\$ 34,585.11
SISF	MCL 418.551(4)	04/30/09	01/01/09 thru 12/31/09	\$741,109.45
TOTAL				\$1,130,191.92

Richard W. Smith, being duly sworn, deposes and says that he is authorized to act under Chapter 5 of the Michigan Workers' Disability Compensation Act, MCL 418.515(2), and that to the best of his knowledge and belief, the debtor is indebted to the State of Michigan, Funds Administration in this amount.

Richard W. Smith  
RICHARD W. SMITH

Subscribed and sworn to before me  
this 14<sup>th</sup> day of July, 2009

Dame A. Gonea

AMY AELOLA GONEA  
NOTARY PUBLIC, STATE OF MI  
COUNTY OF INDIANAPOLIS  
MY COMMISSION EXPIRED 07-01-2011  
ACTING IN COURTS



**State of Michigan**  
Jennifer M. Granholm, Governor

**Department of Energy, Labor & Economic Growth**  
Stanley "Skip" Pruss, Director

**Workers' Compensation Agency**  
Funds Administration  
7201 W. Saginaw Hwy., Ste. 110  
Lansing, MI 48917  
Phone: (517) 241-8999  
Fax: (517) 241-8921  
[www.michigan.gov/wca](http://www.michigan.gov/wca)

**Trustees**  
Richard F. Zapala, Chair  
Jack A. Nolish  
Susan Azar

June 25, 2009

**MARK FRAYLICK, MGR WORKERS' COMP  
DELPHI AUTOMOTIVE SYSTEMS CORP.  
5825 DELPHI DRIVE  
MC-480-410-104  
TROY, MI 48098**

**RE:2009 Second Injury Fund Assessment**

Dear Sir/Madam:

This letter is notice of the annual assessment made in accordance with the Michigan Workers' Disability Compensation Act, Chapter 5, Section 551(1) & (3). **ALL PAYMENTS ARE REQUIRED BY September 23, 2009.**

The amount due from your company for 2009 is 0.01435 of your total Michigan workers' compensation benefits, including redemption settlements, but excluding medical costs, rehabilitation payments, and funeral costs, paid during calendar year 2008. In addition, the amount reported on which assessments are due should not include monies reimbursed by the Second Injury Fund; Silicosis, Dust Disease and Logging Industry Compensation Fund; or Compensation Supplement Fund. It should be noted that per Section 551(7), an employer who has ceased to be a self-insurer continues to be liable for the Second Injury Fund assessment on all benefits paid under your self-insurance program. If you are or were a self-insured employer, it is your obligation to determine ALL payments made under your self-insurance program.

Separate checks must be issued for the Second Injury Fund assessment; Silicosis, Dust Disease and Logging Industry Compensation Fund assessment; and the Self-Insurers' Security Fund assessment. Please make your check payable to: **State of Michigan - Second Injury Fund**. If you have any questions concerning the assessment, please contact Valerie A. Hart at the above address.

Very truly yours,

Jack A. Nolish, Director  
Workers' Compensation Agency

**== FORM ON REVERSE SIDE ==**

**PLEASE COMPLETE THIS FORM AND RETURN IT (BOTH FRONT AND BACK SIDES) WITH YOUR REMITTANCE IN FULL BY SEPTEMBER 23, 2009 TO:**

**State of Michigan - Second Injury Fund  
7201 W. Saginaw Hwy., Ste. 110  
Lansing, MI 48917**

**Attention: Valerie A. Hart, Assessment Coordinator**

**\*\*EACH FUND CHECK AND THIS DOCUMENT CAN BE MAILED IN THE SAME ENVELOPE. IT IS IMPERATIVE THAT YOU RETURN THIS DOCUMENT WITH YOUR PARTY AND REFERENCE NUMBERS INCLUDED TO INSURE PROPER CREDIT TO YOUR ACCOUNT\*\***

**MARK FRAYLICK, MGR WORKERS' COMP  
DELPHI AUTOMOTIVE SYSTEMS CORP.  
5825 DELPHI DRIVE  
MC-480-410-104  
TROY, MI 48098**

Funds Administration Party #: 12933

REFERENCE NUMBER: 49906 (Please use this reference number in your correspondence.)

Our total amount of Michigan workers' compensation benefits, including redemption settlements, but excluding medical costs, rehabilitation payments, and funeral costs, paid during calendar year 2008 was:

\$ \_\_\_\_\_

0.01435 of the above amount is \$ \_\_\_\_\_ for which remittance is enclosed.

Please complete the fields in bold below and complete the company name and address if different than what is listed on the address above

Company Name \_\_\_\_\_ FED ID# \_\_\_\_\_

Address \_\_\_\_\_

Contact Person/Title \_\_\_\_\_ Telephone # \_\_\_\_\_

E-Mail \_\_\_\_\_

Completed By/Title \_\_\_\_\_ Telephone # \_\_\_\_\_

Please contact your service company to verify who is to make payment of this invoice as to avoid duplicate payment.

Service Company (If applicable) \_\_\_\_\_

Service Company Telephone # \_\_\_\_\_ Date \_\_\_\_\_



**State of Michigan**  
Jennifer M. Granholm, Governor

**Department of Energy, Labor & Economic Growth**  
Stanley "Skip" Pruss, Director

**Workers' Compensation Agency**  
Funds Administration  
7201 W. Saginaw Hwy., Ste. 110  
Lansing, MI 48917  
Phone: (517) 241-8999  
Fax: (517) 241-8921  
[www.michigan.gov/wca](http://www.michigan.gov/wca)

**Trustees**  
Richard F. Zapala, Chair  
Jack A. Nolish  
Susan Azar

June 25, 2009

**MARK FRAYLICK, MGR WORKERS' COMP  
DELPHI AUTOMOTIVE SYSTEMS CORP.  
5825 DELPHI DRIVE  
MC-480-410-104  
TROY, MI 48098**

**RE: 2009 Silicosis, Dust Disease And Logging Ind Comp Fund Assessment**

Dear Sir/Madam:

This letter is notice of the annual assessment made in accordance with the Michigan Workers' Disability Compensation Act, Chapter 5, Section 551(2) & (3). **ALL PAYMENTS ARE REQUIRED BY SEPTEMBER 23, 2009**

The amount due from your company for 2008 is 0.0014 of your total Michigan workers' compensation benefits, including redemption settlements, but excluding medical costs, rehabilitation payments, and funeral costs, paid during calendar year 2008. In addition, the amount reported on which assessments are due should not include monies reimbursed by the Second Injury Fund; Silicosis, Dust Disease and Logging Industry Compensation Fund; or Compensation Supplement Fund. It should be noted that per Section 551(7), an employer who has ceased to be a self-insurer continues to be liable for the Silicosis, Dust Disease And Logging Ind Comp Fund assessment on all benefits paid under your self-insurance program. If you are or were a self-insured employer, it is your obligation to determine ALL payments made under your self-insurance program.

Separate checks must be issued for the Second Injury Fund assessment; Silicosis, Dust Disease and Logging Industry Compensation Fund assessment and the Self-Insurers' Security Fund assessment. Please make your check payable to: **State of Michigan - Silicosis, Dust Disease And Logging Ind Comp Fund**. If you have any questions concerning the assessment, please contact Valerie A. Hart at the above address.

Very truly yours,

Jack A. Nolish, Director  
Workers' Compensation Agency

**— FORM ON REVERSE SIDE —**

**PLEASE COMPLETE THIS FORM AND RETURN IT (BOTH FRONT AND BACK SIDES) WITH YOUR REMITTANCE IN FULL BY SEPTEMBER 23, 2009 TO:**

**State of Michigan - Silicosis, Dust Disease and Logging Industry Compensation Fund**  
**7201 W. Saginaw Hwy., Ste. 110**  
**Lansing, MI 48917**

**Attention: Valerie A. Hart, Assessment Coordinator**

**\*\*EACH FUND CHECK AND THIS DOCUMENT CAN BE MAILED IN THE SAME ENVELOPE. IT IS IMPERATIVE THAT YOU RETURN THIS DOCUMENT WITH YOUR PARTY AND REFERENCE NUMBERS INCLUDED TO INSURE PROPER CREDIT TO YOUR ACCOUNT\*\***

**MARK FRAYLICK, MGR WORKERS' COMP  
DELPHI AUTOMOTIVE SYSTEMS CORP.  
5825 DELPHI DRIVE  
MC-480-410-104  
TROY, MI 48098**

Funds Administration Party #: 12933

REFERENCE NUMBER: 50671 (Please use this reference number in your correspondence.)

Our total amount of Michigan workers' compensation benefits, including redemption settlements, but excluding medical costs, rehabilitation payments, and funeral costs, paid during calendar year 2008 was:

\$ \_\_\_\_\_

0.0014 of the above amount is \$ \_\_\_\_\_ for which remittance is enclosed.

Please complete the fields in bold below and complete the company name and address if different than what is listed on the address above

**Company Name** \_\_\_\_\_ **FED ID#** \_\_\_\_\_

**Address** \_\_\_\_\_

**Contact Person/Title** \_\_\_\_\_ **Telephone #** \_\_\_\_\_

E-Mail \_\_\_\_\_

**Completed By/Title** \_\_\_\_\_ **Telephone #** \_\_\_\_\_

Please contact your service company to verify who is to make payment of this invoice as to avoid duplicate payment.

**Service Company (if applicable)** \_\_\_\_\_

**Service Company Telephone #** \_\_\_\_\_ **Date** \_\_\_\_\_



**State of Michigan**  
Jennifer M. Granholm, Governor

**Department of Energy, Labor & Economic Growth**  
Stanley "Skip" Pruss, Director

**Workers' Compensation Agency**  
Funds Administration  
7201 W. Saginaw Hwy., Ste. 110  
Lansing, MI 48917  
Phone: (517) 241-8999  
Fax: (517) 241-8921  
[www.michigan.gov/wca](http://www.michigan.gov/wca)

**Trustees**  
Richard F. Zapala, Chair  
Jack A. Nolish  
Susan Azar

June 25, 2009

**MARK FRAYLICK, MGR WORKERS' COMP**  
**DELPHI AUTOMOTIVE SYSTEMS CORP.**  
**5825 DELPHI DRIVE**  
**MC-480-410-104**  
**TROY, MI 48098**

**RE:2009 Self-Insurers' Security Fund Assessment**

**NOTE: This Assessment is on PRIVATE Self-Insured Employers only.**

Dear Sir/Madam:

This letter is notice of the annual assessment made in accordance with the Michigan Workers' Disability Compensation Act, Chapter 5, Section 551(4). **ALL PAYMENTS ARE REQUIRED BY September 23, 2009**

The amount due from your company for 2009 is 0.03 of your total Michigan workers' compensation benefits, including redemption settlements, but excluding medical costs, rehabilitation payments, and funeral costs, paid during calendar year 2008. In addition, the amount reported on which assessments are due should not include monies reimbursed by the Second Injury Fund; Silicosis, Dust Disease and Logging Industry Compensation Fund; or Compensation Supplement Fund. It should be noted that per Section 551(7), an employer who has ceased to be a self-insurer continues to be liable for the Self-Insurers' Security Fund assessment on all benefits paid under your self-insurance program. If you are or were a self-insured employer, it is your obligation to determine ALL payments made under your self-insurance program.

Separate checks must be issued for the Second Injury Fund assessment; Silicosis, Dust Disease and Logging Industry Compensation Fund assessment; and the Self-Insurers' Security Fund assessment. Please make your check payable to: **State of Michigan - Self-Insurers' Security Fund**. If you have any questions concerning the assessment, please contact Valerie A. Hart at the above address.

Very truly yours,

A handwritten signature in black ink, appearing to read "Jack A. Nolish".

Jack A. Nolish, Director  
Workers' Compensation Agency

**= FORM ON REVERSE SIDE =**

**PLEASE COMPLETE THIS FORM AND RETURN IT (BOTH FRONT AND BACK SIDES) WITH YOUR REMITTANCE IN FULL BY SEPTEMBER 23, 2009 TO:**

**State of Michigan - Self-Insurers' Security Fund  
7201 W. Saginaw Hwy., Ste. 110  
Lansing, MI 48917**

**Attention: Valerie A. Hart, Assessment Coordinator**

**\*\*EACH FUND CHECK AND THIS DOCUMENT CAN BE MAILED IN THE SAME ENVELOPE. IT IS IMPERATIVE THAT YOU RETURN THIS DOCUMENT WITH YOUR PARTY AND REFERENCE NUMBERS INCLUDED TO INSURE PROPER CREDIT TO YOUR ACCOUNT\*\***

**MARK FRAYLICK, MGR WORKERS' COMP  
DELPHI AUTOMOTIVE SYSTEMS CORP.  
5825 DELPHI DRIVE  
MC-480-410-104  
TROY, MI 48098**

**Funds Administration Party #: 12933**

**REFERENCE NUMBER: 49133 (Please use this reference number in your correspondence.)**

**Our total amount of Michigan workers' compensation benefits, including redemption settlements, but excluding medical costs, rehabilitation payments, and funeral costs, paid during calendar year 2008 was:**

**\$ \_\_\_\_\_**

**0.03 of the above amount is \$ \_\_\_\_\_ for which remittance is enclosed.**

**Please complete the fields in bold below and complete the company name and address if different than what is listed on the address above**

**Company Name \_\_\_\_\_ FED ID# \_\_\_\_\_**

**Address \_\_\_\_\_**

**Contact Person/Title \_\_\_\_\_ Telephone # \_\_\_\_\_**

**E-Mail \_\_\_\_\_**

**Completed By/Title \_\_\_\_\_ Telephone # \_\_\_\_\_**

**Please contact your service company to verify who is to make payment of this invoice as to avoid duplicate payment.**

**Service Company (if applicable) \_\_\_\_\_**

**Service Company Telephone # \_\_\_\_\_ Date \_\_\_\_\_**

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

In Re:

DELPHI CORPORATION, et al.,

Court No. 05-44481

Debtor(s).

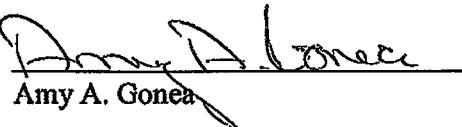
Chapter 11  
(Jointly Administered)

STATE OF MICHIGAN)ss  
COUNTY OF INGHAM)

**PROOF OF SERVICE**

Amy A. Gonea, certifies that on July 14, 2009, a copy of Administrative Expense Claim Form on behalf of the Michigan Funds Administration was served upon the parties noted below by overnight mail by enclosing same in an envelope and depositing same in a United Parcel Service box in Lansing, Michigan, plainly addressed to the following persons:

Kurtzman Carson Consultants  
ATTN: Delphi Corp  
2335 Alaska Ave  
El Segundo CA 90245

  
Amy A. Gonea

**PLEASE COMPLETE AND RETURN THIS FORM BY FEBRUARY 26, 2009.**

State of Michigan  
Funds Administration  
7201 W. Saginaw Hwy., Ste. 110  
Lansing, Michigan 48917

12933

ATTN: Dennis S. Morill, Funds Administrator

Our total amount of Michigan workers' compensation benefits, including redemption settlements, but excluding medical benefits, rehabilitation payments, and funeral costs paid during calendar year 2008 is:

\$ 24,703,648.45

This figure does not include monies reimbursed by the Second Injury Fund, Silicosis, Dust Disease and Logging Industry Compensation, or Compensation Supplement Fund.

→Please provide complete contact information including an e-mail address←

Company Name Delphi Corporation Federal ID # 38-3430473

Address 5825 Delphi Drive, MC 480-410-104, Troy, MI 48098

Contact Person/Telephone Number of Company Mark Fraylick Telephone 248-813-1252

E-mail Address Mark.A.fraylick@delphi.com

Certified Correct By Mark Fraylick Title Manager, Workers' Compensation

Service Company (if applicable) Sedgwick CMS Date 2/25/09

Telephone Number 248-603-8167

MARK FRAYLICK, MGR WORKERS' COMP  
DELPHI AUTOMOTIVE SYSTEMS CORP.  
5825 DELPHI DRIVE  
MC-480-410-104  
TROY, MI 48098

Mark Fraylik

Self-Insured Employer

UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

In Re: Case No. 05-44481 (RDD)  
DELPHI CORPORATION, et al., Chapter 11  
Debtors. Honorable Robert D. Drain

AFFIDAVIT

RICHARD W. SMITH, Assistant Funds Administrator of Michigan's Funds Administration, 7201 W. Saginaw, Lansing, Michigan 48917, being first duly sworn says:

- 1) That he is an Assistant Funds Administrator as authorized in Chapter 5 of the Workers' Disability Compensation Act, MCLA 418.515(2), and is duly authorized to and does make this affidavit.
- 2) That the statutory assessments as set forth by the attached Proof of Claim for Unpaid Assessments were calculated based on Delphi Corporation's 2008 indemnity losses in Michigan.
- 3) That the statutory assessments as set forth by the attached Proof of Claim for Unpaid Assessments are due and owing as of the date of this affidavit.

Richard W. Smith  
RICHARD W. SMITH

STATE OF MICHIGAN )  
ACTING IN THE COUNTY OF Ingham )

Subscribed and sworn before me this 14 day of  
Sept, 2009

Dorothy A. Lence  
Notary Public

AMY AELOLA GONEA  
NOTARY PUBLIC, STATE OF MI  
COUNTY OF INGHAM  
MY COMMISSION EXPIRES Oct 31, 2011  
ACTING IN COUNTY OF

**Exhibit B**

Page 1

1

2 UNITED STATES BANKRUPTCY COURT

3 SOUTHERN DISTRICT OF NEW YORK

4 Case No. 05-44481-rdd

5 - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - x

6 In the Matter of:

7

8 DPH HOLDINGS CORP., ET AL.,

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10 Debtor.

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12 - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - x

13

14 United States Bankruptcy Court

15 300 Quarropas Street

16 White Plains, New York

17

18 August 27, 2010

19 10:24 AM

20

21 B E F O R E:

22 HON. ROBERT D. DRAIN

23 U.S. BANKRUPTCY JUDGE

24

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Page 2

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2 Hearing re Proposed Fifty-Eighth Omnibus Hearing Agenda

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4 Hearing re Proposed Thirty-Sixth Claims Hearing Agenda

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25 Transcribed by: Sara Bernstein

Page 3

1

2 A P P E A R A N C E S :

3 SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP

4 Attorneys for the Reorganized Debtors

5 155 North Wacker Drive

6 Chicago, IL 60606

7

8 BY: MICHAEL W. PERL, ESQ.

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1 P R O C E E D I N G S

2 THE COURT: Okay, DPH Holdings?

3 MR. PERL: Good morning, Your Honor. Michael Perl of  
4 Skadden, Arps, Slate, Meagher & Flom LLP on behalf of the  
5 reorganized debtors. Your Honor, we're here today for the  
6 fifth-eighth omnibus hearing. We filed an agenda yesterday at  
7 docket number 20545 and with Your Honor's permission, I'd like  
8 to proceed in accordance with that agenda.

9 THE COURT: Okay. That's fine.

10 MR. PERL: And one item of note, matter six on the  
11 agenda, the motion of the VEBA committee, that has been  
12 adjourned to the September hearing. So that leaves only two  
13 contested matters for today's omnibus hearing.

14 THE COURT: Okay. And I think Mr. Gloster's on in  
15 respect to that -- on the phone. Is that right?

16 (No response)

17 Well, maybe not. Maybe he signed up for it but then  
18 because of the adjournment, he's not on. Okay. All right.  
19 So, why don't you proceed with the matters that are on the  
20 agenda for actual hearing today.

21 MR. PERL: The first contested matter is matter five,  
22 which is the motion of Excellus to permit filing of a later  
23 administrative claim.

24 THE COURT: Right.

25 MR. PERL: And I'd like to turn over the podium to

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1 counsel for Excellus to present their motion.

2 THE COURT: Okay.

3 MR. LINDENMAN: Good morning, Your Honor.

4 THE COURT: Good morning.

5 MR. LINDENMAN: Eric Lindenman, Harris Beach for the  
6 claimant Excellus. Your Honor, the request to file late claims  
7 is not new law. There's nothing that's particularly  
8 complicated about this. Everyone is aware of the requirements  
9 of Pioneer and related case law. Your Honor, instead what I'd  
10 like to do is explain to the Court what's not particularly  
11 clear in the papers which is the issue regarding excusable  
12 neglect.

13 I've had an opportunity to speak further with my  
14 partners in our Syracuse office which is the attorney who had  
15 drafted the papers. And my understanding is the issue appears  
16 to stem, in large part, from the way this premium was built.  
17 This was a sort of reconciliation at the end of one year and  
18 then billed to the new year. And given the timing of this, I  
19 can see where their problem was -- Excellus.

20 And I'd like to try to explain that to Your Honor  
21 because the papers did not see specifically detail the  
22 excusable neglect. And I certainly regret that it wasn't more  
23 detailed in this regard. The way these premiums work, Your  
24 Honor, is with for a calendar year and based upon a variety of  
25 factors, the premium was set, it was paid and then any actual

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1 cost during the course of the year, based upon a variety of  
2 factors, was sort of trued up at the end of the year. So if  
3 they paid 400,000 dollars, for instance, and the actual cost of  
4 the insurance was only 350, Excellus would give the debtor a  
5 50,000 dollar credit towards the next year. And it was up and  
6 down in a variety of years, depending upon what the actual cost  
7 was and related to other factors.

8 It appears that for the period that ended '08, the  
9 recalculation and truing up occurred, amazingly enough, on the  
10 day after it appears that the administrative claims bar date  
11 occurred. And for whatever reason, this is the way that  
12 Excellus has calculated.

13 THE COURT: But why would it take that -- I mean,  
14 that's July 15th. Why would it take seven -- or six and half a  
15 months to do that?

16 MR. LINDENMAN: That's part of the problem, Your  
17 Honor.

18 THE COURT: Okay.

19 MR. LINDENMAN: And my office was not involved in that  
20 aspect of it until, essentially, after the fact. And as best  
21 as we can determine, after that initial bar date and prior to  
22 the final claims bar date in November, one of the people who  
23 received notice was the sales representative for DPH. There  
24 clearly was a breakdown in the process and while happenstance  
25 can readily explain the initial bar date in July, there is no

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1 ready explanation for why it failed in Excellus' office, other  
2 than to say, Your Honor, that it simply did fail. They did not  
3 have a procedure in place to track this issue because when the  
4 initial bar date came, they had no balance due because they  
5 hadn't been trued-up for the prior year.

6 It was only after the July bar date that they learned  
7 that there was a balance due. But because of the way they bill  
8 and the way they invoice and the way they track this, it didn't  
9 come to their attention until well after -- I shouldn't say it  
10 didn't come to their attention, Your Honor, because we don't  
11 dispute the notices were received. It didn't occur to the  
12 people at Excellus that in fact, an unpaid claim remained due  
13 from DPH holder.

14 They've since addressed their procedures in terms of  
15 notice but during the course of this billing period and  
16 ultimately, it came to their attention when DPH chose not to  
17 renew and then they trued-up at the end of that and realized  
18 there was this claim that was still due. During the course of  
19 the bankruptcy, because they showed no balance due as of the  
20 initial bar date and then didn't show a balance due until  
21 later, it never -- the light never turned out at Excellus with  
22 regard to the existence of a claim that was subject to the  
23 administrative bar date.

24 It's what happened, whether that falls under the  
25 Pioneer Standard, obviously it's not for me to decide, Your

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1 Honor, but the fact is that there was a failure at Excellus to  
2 recognize that a claim existed because the truing up process  
3 didn't occur until much later. And then when they saw that  
4 there was a balance, they assumed that it would be, as always,  
5 taken care of with either a credit or in this instance,  
6 additional fee charged for the new premium. There's really  
7 nothing more that I can provide to Your Honor in terms of the  
8 excusable neglect. We don't believe that under the  
9 circumstances it is an inordinately long period of time. We  
10 dealt with it as soon as my firm learned of it. The --

11 THE COURT: And that was May 2010?

12 MR. LINDENMAN: Approximately right around when the  
13 motion was ultimately filed. We learned what we learned, took  
14 appropriate action, had that conversation no one likes to have  
15 with their client, "What were you thinking?" And we learned  
16 that they weren't thinking anything because of the way their  
17 premium and billing system operated, they would not have been  
18 aware of it until well after the fact.

19 THE COURT: Okay. All right.

20 MR. LINDENMAN: Thank you, Your Honor.

21 THE COURT: Thanks.

22 MR. PERL: Michael Perl on behalf of the reorganized  
23 debtors. Your Honor, the reorganized debtors are prepared to  
24 rely on their objection that was submitted. We think that it's  
25 pretty clear in this case notice is not in dispute. Because

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1 the notice is not in dispute, Excellus has to meet the  
2 excusable neglect standard set forth by the Supreme Court in  
3 the Pioneer case as adopted by the Second Circuit. There are  
4 four factors, the danger to the prejudice of the -- the danger  
5 of prejudice to the debtor, the length of the delay, the reason  
6 for the delay as well as the good faith.

7 The Second Circuit, as applied by this Court -- by the  
8 courts in this district, have put heavy weight on the reason  
9 for the delay and in this case, we don't believe that Excellus  
10 has provided a viable reason for delay. And that alone should  
11 be sufficient to deny their motion but in this case, Your  
12 Honor, the length of the delay as well as the prejudice to the  
13 debtors also weigh in favor of the reorganized debtors. Your  
14 Honor, just in response to counsel's point about the invoices  
15 issued in July of 2009, you got -- it was more than a year  
16 before the motion for leave to file a late claim was filed.  
17 And as well, during that time period, the modified plan was  
18 approved, the master disposition agreement was approved and the  
19 plan went effective. And all those factors were key in the  
20 reorganized debtors' efforts during that key time period.

21 So unless Your Honor has any other further -- any  
22 further questions, we respectfully request that the motion be  
23 denied.

24 THE COURT: Okay.

25 MR. LINDENMAN: Your Honor, I'm sorry, just one last

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1 issue and I don't know if the Court if I can hear --

2 THE COURT: No. You can stand there. The microphone  
3 will pick you up.

4 MR. LINDENMAN: Okay, fine. We thought that what we  
5 would note is that the July invoice was in fact forwarded to  
6 the debtor so while there admittedly was not a timely file of  
7 the administrative claim, the debtors were on constructive  
8 notice in July when the invoice was ultimately issued that  
9 there was a claim outstanding and that certainly given the  
10 timing post-petition, that it was an administrative claim. So,  
11 not formal notice in terms of a filed administrative claim but  
12 the debtor was on notice of the existence of this claim. As it  
13 would have been in all prior years, this was the form -- format  
14 that was used.

15 Perhaps it's not the best and Excellus is moving  
16 towards monitoring it more closely and changing but the debtor  
17 certainly did have actual notice of the existence of the claim,  
18 clearly in the post-petition period, clearly constituting an  
19 administrative expense claim and the debtor -- I'm sorry,  
20 Excellus, Your Honor, clearly did not file the timely claim but  
21 they did have the notice.

22 THE COURT: Okay.

23 MR. PERL: Thank you.

24 THE COURT: All right. I have before me a motion by  
25 Excellus Health Plans, Inc. for leave under Bankruptcy Rule

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1 9006(b)(1) to file a late proof of administrative expense claim  
2 in this Chapter 11 case, DPH Holdings, which is the successor  
3 to the debtors. For purposes of claims administration, it has  
4 objected to the motion.

5 The facts are generally as follows, the Court set an  
6 initial administrative claims bar date in this case, which  
7 commenced in October of 2005, to be July 15th, 2009 for any  
8 administrative claim that arose before June 1, 2009. That is  
9 for the period from the commencement of the case through June  
10 1, 2009. The reason for setting an administrative claims bar  
11 date was that the debtors, although their first plan had been  
12 confirmed, had been unable to consummate that plan. And after  
13 substantial negotiations and analysis had proposed a modified  
14 plan, that was set by the plan modification procedures order  
15 which was entered June 16th, 2009 for a confirmation hearing at  
16 the end of July 2009.

17 One of the key requirements of confirmation of a  
18 Chapter 11 plan was -- is that the plan provide for payment in  
19 full of all allowed administrative expenses. That was a  
20 significant issue in this case with regard to the modified  
21 plan's confirmation because of the debtors' deteriorated  
22 financial condition and the concern that it would not have  
23 sufficient cash to pay for the payment of all allowed  
24 administrative expense claims. So the bar date was set for  
25 approximately two weeks before the confirmation hearing and the

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1 record on the debtors' best estimate of allowable  
2 administrative claims was an important factor of the  
3 confirmation hearing and the Court's determination ultimately  
4 to confirm a plan here, which was confirmed by order dated July  
5 30th, 2009.

6 The plan then went effective on October 6th, 2009.  
7 Excellus calculated the amount owing for the period at issue  
8 and in fact, billed the debtor for it in July, although a few  
9 days after the bar date 2009, but it did not file an  
10 administrative expense claim by the July 15th, 2009 bar date.  
11 and in fact, did not inform the debtors of its desire to do so  
12 until sometime in May 2010, several months after confirmation  
13 and the effective date of the plan.

14 The claim is for approximately --well, it's for  
15 exactly \$411,318.50 which as an administrative claim, would be  
16 paid in full and in cash in the case. Bankruptcy Rule 9006(b)  
17 permits a claimant to file a late proof of claim if the failure  
18 to submit a timely proof of claim was due to "excusable  
19 neglect". The burden of proving excusable neglect is on the  
20 claimant seeking to extend the bar date In re R.H. Macy & Co.,  
21 161 B.R. 355, 360 (Bankr. SDNY 1993). I have held in this  
22 case, as did Judge Lifland in the Dana Corporation case, that  
23 that burden applies to the claimant asserting a late proof of  
24 administrative expense after the administrative expense bar  
25 date as well as with regard to the general unsecured claims bar

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1 date. And Bankruptcy Rule 9006(b)(1) appears to me to apply  
2 equally to such a request. See In re Dana Corp., 2007 WL  
3 157763, page 3 (Bankr. SDNY 2007) as well as the transcript  
4 citation to my ruling earlier in this Chapter 11 case that's in  
5 the debtors' supplemental response -- or DPH's supplemental  
6 response to Excellus' motion.

7 The Supreme Court has developed a two-step test for  
8 determining whether a late filing is due to excusable neglect  
9 in Pioneer Investment Services Company v. Brunswick Associates  
10 Limited Partnership 507 U.S. 380 (1993). First, the movant  
11 must show that its failure to file a timely claim constituted  
12 neglect as opposed to willfulness or a knowing admission,  
13 neglect generally being attributed to a movant's inadvertence,  
14 mistake or carelessness ibid. at 387-88.

15 After establishing neglect as opposed to willfulness  
16 or a knowing admission. The movant must show, by preponderance  
17 of the evidence, that its neglect was excusable. That analysis  
18 is undertaken on a case-by-case basis based on the particular  
19 facts of the case although, the Court should be guided by and  
20 make the determination balancing the following factors, a, the  
21 danger of prejudice to the debtor, b, the length of the delay  
22 and whether or not it would impact the case, c, the reason for  
23 the delay, in particular, when the delay was in the control of  
24 the movant and d, whether the movant acted in good faith, ibid.  
25 395.

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1           The third factor, the reason for the delay in a  
2 particular way that the delay was within control of the movant  
3 is a distinction from saying that the movant knowingly and  
4 willfully chose not to file the claim and focuses instead on  
5 the degree of the -- of control that the movant had over its  
6 actions. Inadvertence, ignorance of the rules or mistakes  
7 construing the rules do not usually constitute excusable  
8 neglect, Midland Cogeneration Venture LP v. Enron Corporation,  
9 In re Enron Corporation 419 F. 3d 115 126 Second Circuit 2005  
10 visiting Pioneer 507 U.S. at 392.

11           In Midland Cogeneration, the Second Circuit stated,  
12 "We have taken a hard line in applying the Pioneer test. In a  
13 typical case, three of the Pioneer factors, the length of the  
14 delay, the danger of prejudice and the movant's good faith  
15 usually weigh in favor of the party seeking the extension. We  
16 noted though that we and other circuits have focused on the  
17 third factor, the reason for the delay, including whether it  
18 was within the reasonable control of the movant and we  
19 cautioned the equities will rarely, if ever, favor a party who  
20 fails to show -- I'm sorry -- who fails to follow the clear  
21 dictates of a Court rule and that where the rule is entirely  
22 clear, we continue to expect that a party claiming the  
23 excusable neglect will, in the ordinary course, lose under the  
24 Pioneer test", ibid. at 122 through 123, internal quotations  
25 and citations omitted. See also In re Musicland Holding

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1 Corporation 2006 Bankr. Lexis 315 at pages 10 through 11  
2 (Bankr. SDNY 2006) in which Chief Bankruptcy Judge Bernstein,  
3 citing Enron, stated that the Second Circuit focuses on the  
4 reason for the delay in determining excusable neglect under  
5 Pioneer and that "The other factors are relevant only in closed  
6 cases."

7 Here, before examining those factors, it should be  
8 reiterated that the bar date in the Chapter 11 case always  
9 serves the important purpose of enabling the parties in  
10 interest to ascertain, with reasonable promptness, the identity  
11 of those making claims against the estate and the general  
12 amount of claims which is the necessary step in achieving the  
13 goal of successful reorganization, In re Calpine Corp., U.S.  
14 Dist. Lexis 86514, pages 14 through 15 (SDNY November 21,  
15 2007). Thus, the bar date or bar order does not merely  
16 function as a procedural gauntlet but is an integral part of  
17 the reorganization process, In re Hooker Investments Inc. 937  
18 F. 2d 833, 840 (2d Cir. 1991).

19 Here, as I noted, the administrative expense bar date  
20 was very much an important part of the Court determination to  
21 confirm the modified plan and serve the function importantly to  
22 enable other parties in interest besides the debtors to  
23 evaluate the administrative claims. In particular, it enabled  
24 the debtors -- debtor possession lenders who in essence acquire  
25 the debtors for their claims and for commitments to support the

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1 debtors upon their emergence to evaluate the financial burden  
2 that that would entail in terms of paying off allowed  
3 administrative claims.

4 Here, there's no contention that the administrative  
5 claims -- I'm sorry -- administrative bar date notice to  
6 claimants was clear that the bar date needed to be complied  
7 with, even with respect to contingent in liquidated claims.  
8 It's also clear from the record that although Excellus was not  
9 willful in failing to file a proof of claims i.e., it was  
10 neglectful, that the ability to file a timely administrative  
11 expense claim was well within its control.

12 It was able, one day after the bar date, to send a  
13 bill to the debtors for the same amount that would be within  
14 the proof of claim. I'm assuming that calculation was not  
15 made, literally, on July 16th but would have required some work  
16 beforehand that it could have done if it had put two and two  
17 together could have put into an administrative proof of claim.  
18 It did not do so; indeed, it did not file an administrative  
19 claim late along with the July 16th, 2009 bill and indeed, it  
20 missed the second administrative claims bar date deadline of  
21 November 5, 2009 which covered administrative expenses arising  
22 after June 1, 2009 and was necessary for focusing on the  
23 debtors' emergence on the effective date. Instead, as I noted,  
24 the first airing of the issue was in May of 2010 when counsel  
25 was retained by Excellus and counsel reached out to the debtors

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1 about the issue of the late proof of administrative expense.

2           In light of that, I conclude that the reason for the  
3 delay, the most important factor, weighs heavily against  
4 Excellus and generally speaking, that I believe would resolve  
5 the issue given the importance here of timely compliance with  
6 the administrative expense bar date and the need for third  
7 parties to seek such claims so they could do their analysis in  
8 connection with the upcoming hearing on approval of the  
9 modified plan. In addition however, the length of the delay  
10 here was substantial. Some courts have even stated that that  
11 factor's not dispositive if it's in favor of the movant if the  
12 movant filed its claim one day late. That clearly was not the  
13 case here. The claim wasn't asserted as a claim until May  
14 2010, again, many months after the bar date. And the motion  
15 was not filed until even later. The movant did act in good  
16 faith but as Pioneer points out as well as Midland  
17 Cogeneration, that's normally the case in these cases.

18           And I believe given the importance of the  
19 administrative claims bar date, the fact that administrative  
20 claims would be paid in full and the reliance on that by the  
21 parties, in essence, funding the plan, I believe the danger of  
22 prejudice to the debtor is significant here. The debtor has  
23 not contended that it lacks the cash to make the payment of the  
24 claim or permitted to be filed late and then allowed. However,  
25 it points out that the allowance of this claim, under these

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1       circumstances, would open the door to requests of late filing  
2       with respect to other claims and notes also that the Court has  
3       ruled on similar requests already in a number of cases in this  
4       case, denying several hundred motions, all highlighting the  
5       validity of the so-called opening the floodgates argument which  
6       is, I believe, a valid one here.

7                   So in light of all those factors, I conclude that the  
8       claim being late should not be deemed timely filed under Rule  
9       9006. I also conclude that the July 16th bill does not  
10      constitute an informal proof of claim that should be deemed  
11      timely as being only one date late. A key element of the  
12      informal proof of claim rule is that the claim had been timely  
13      filed with the Bankruptcy Court and had become a part of the  
14      judicial record, see Enron -- I'm sorry -- In re Enron  
15      Creditors Recovery Corp., 370 B.R. 98-99 (Bankr. SDNY 2007) and  
16      In re Houbigant 190 B.R. 185, 187 (Bankr. SDNY 1995). That's  
17      because, again, Chapter 11 is generally a collective process  
18      and the bar date is not simply a means to duplicate the  
19      debtors' own internal accounting but is to -- intended to  
20      provide notice to the other parties interested in the case of  
21      the claims that are actually on file and at least on a prima  
22      facie validity basis, entitled to be paid. As I stated before,  
23      that was particularly important here in this case for those who  
24      were looking to contribute and make concessions in respect of  
25      the confirmation of the modified plan. So for those reasons

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1 I'll deny the motion and the debtor should submit an order  
2 consistent with that.

3 MR. LINDENMAN: Thank you, Your Honor.

4 THE COURT: Okay. Thank you.

5 MR. PERL: Thank you, Your Honor. Michael Perl on  
6 behalf of the reorganized debtors. Your Honor, the next  
7 contested matter on the omnibus agenda is the letter that was  
8 filed by claimant Philip J. Carson. I believe Mr. Carson's on  
9 the line and I'm happy to turn it over to Mr. Carson or provide  
10 Your Honor with a brief summary of that one.

11 THE COURT: Mr. Carson, are you on the phone?

12 MR. CARSON: Yes, I am.

13 THE COURT: Okay. I want to make sure I understand  
14 the history of this and I'll hear from both of you but let me  
15 go through it and then see if there's anything I'm missing  
16 here.

17 MR. CARSON: Do you want me to tell you my side?

18 THE COURT: Sorry?

19 MR. CARSON: Do you want me to just tell you my side  
20 of it or --

21 THE COURT: Well, no. I'm going to go through what I  
22 think the --

23 MR. CARSON: Okay.

24 THE COURT: -- facts are and then either of you can  
25 tell me if I'm missing something as far as the --

1 MR. CARSON: Okay.

2 THE COURT: -- you know, the step-by-step here. As I  
3 understand it, there -- again, the debtors set an  
4 administrative claims bar date for filing claims that occurred  
5 between the start of Delphi's case, which was in October of  
6 2005 and June 1st of 2009 and that administrative claims bar  
7 date was July 15th, 2009. They sent notice of that  
8 administrative claims bar date to you at 119 West Jefferson,  
9 Frankenmuth, Michigan. And although you didn't meet the July  
10 15th bar date, you filed a claim -- an administrative expense  
11 claim with the form that was along with the notice on -- that  
12 was received on August 12th, 2009 with the cover letter dated  
13 August 5th, '09 to the debtors' claims agent, saying that, "I  
14 explained to Mr. Kennedy who answered the Delphi legal hotline  
15 that I hadn't received the administrative expense claim form  
16 because I was tending to my mother in Florida for six weeks.  
17 Tom instructed me to mail the form." So that's when the claim  
18 was asserted.

19 Then, Delphi objected to it as a late claim and sent  
20 the objection to that same Michigan address. And there was a  
21 response that was received November 16th, 2009 by the counsel  
22 for the debtors, Skadden Arps, in which you said that that --  
23 in essence, you responded to the objection saying that, again,  
24 because your mother was ill you were out of the state for about  
25 six weeks and when you came back, you promptly contacted

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1 Kurtzman Carson, the claim consultants, and then got a call  
2 back on July 31 from Tom Kennedy and then you filed the claim.  
3 You also stated in this response that the claim amount was  
4 100,000 dollars. And finally, you said, "Please note my change  
5 of address 1141 Vernon Avenue, Port Richey, Florida 34668."

6 Then the debtors, as is the -- required by the claims  
7 procedures or in this case, noticed up a hearing on this  
8 disputed objection and eventually, settled a proposed order on  
9 you which they sent to the Michigan address. And when there  
10 was no response, submitted an order to the Court, which was  
11 entered, that disallowed the claim as late. And then after  
12 that, there was a letter sent to the Court -- I'm sorry -- I'm  
13 sorry -- excuse me -- to the debtors through its counsel from  
14 July of this month, 25 July 2010, attaching, again, the  
15 opposition and noting that you had a new address. Is that a  
16 fair summary?

17 MR. PERL: Yes, Your Honor. The one slight correction  
18 I would make is that the claim was not noticed under the claims  
19 procedures but because it was untimely, we filed a protocol  
20 docket on these cases where we sent him a notice --

21 THE COURT: Okay.

22 MR. PERL: -- asking him to file a motion for leave to  
23 file a late claim which he did not respond to.

24 THE COURT: Okay. Was -- the one question I had is at  
25 the time that that notice went out and the order was settled,

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1 did the debtors have the right address for Mr. Carson? I know  
2 that it wasn't filed with the Court but did the debtors have it  
3 because of that letter?

4 MR. PERL: Yes. I mean, the claim was adjourned and  
5 the thirty-seventh omnibus objection because we received the  
6 undocketed response which listed the address but it was never  
7 sent -- the letter -- Mr. Carson didn't send that to the claims  
8 agent, not until April --

9 THE COURT: Right.

10 MR. PERL: -- of 2010, did the claims agent update the  
11 address.

12 THE COURT: But the right address was -- Skadden had  
13 the right address?

14 MR. PERL: Yes.

15 THE COURT: Okay. All right. But your process is to  
16 have Kurtzman send out the notices?

17 MR. PERL: Correct. And --

18 THE COURT: Right. That's fine. Okay. So, Mr.  
19 Carson, was my summary accurate?

20 MR. CARSON: It was good.

21 THE COURT: Okay.

22 MR. CARSON: Could I say something or --

23 THE COURT: No. Sure. I just wanted to make sure  
24 first that I had the notice points down correctly.

25 MR. CARSON: Just a few -- a couple things I wanted to

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1 mention and although the -- I guess, if I go ahead and talk?

2 THE COURT: Yeah, go ahead.

3 MR. CARSON: First of all, I'm not familiar with the  
4 law so I'll try to do the best I can. And, yeah, I think at  
5 first, at work and it wasn't good and anyway, you're right  
6 about being late. I was -- when I got back from Mom's, it was  
7 late July and I really didn't know what to do because I'm not  
8 familiar with the law real well so I had to make some phone  
9 calls like you said and put the late claim in although, it was  
10 kicked out.

11 And then, of course, like you said, I sent the letter  
12 with -- let's see, that was 10/3/09 and find out whether I  
13 should -- you know, I didn't know what the procedure was, if  
14 there was one, to change an address or change my employer,  
15 which I thought that was the right thing to do. But in the  
16 rebuttal letter from the law firm, which you have in front of  
17 you there, it said that I should have notified KCC. Well, I  
18 don't know what a KCC is and so I notified your Court and the  
19 Skadden and then also, Delphi and I thought that would've been  
20 enough.

21 When the package came -- the denial package for the  
22 claim, I never received it. I didn't receive it until -- oh  
23 jeez -- I think it was May of this year. And then I  
24 responded -- I really didn't know what to do so then I  
25 responded like I did the 25th of July. And that pretty well

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1 sums it up so --

2 THE COURT: Okay.

3 MR. CARSON: I -- you know --

4 THE COURT: All right.

5 MR. CARSON: I thought I followed the procedure  
6 properly and the notification of the address change and then my  
7 mother being ill, I couldn't really help that too much so  
8 that's why I feel under the gun, Judge so --

9 THE COURT: Okay. And the letter says that the claim  
10 is for 100,000 dollars, right?

11 MR. CARSON: Well, the initial claim was one million.

12 THE COURT: Right. And then the response says that  
13 claim is for a hundred thousand?

14 MR. CARSON: Well, you know what? I probably made a  
15 mistake, you know?

16 THE COURT: Okay.

17 MR. CARSON: I guess I made a mistake. It should have  
18 been a million.

19 THE COURT: All right.

20 MR. CARSON: Because I lost a lot of work with the  
21 chlorine gas in the lungs and everything and that's why I'm  
22 down -- unemployed because I can't breathe. The cold air  
23 bothers me --

24 THE COURT: Okay.

25 MR. CARSON: -- in the lungs.

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1 THE COURT: all right.

2 MR. CARSON: But, you know, I just tried to follow it  
3 the way I just knew how to being my own legal consultant so it  
4 looks like everything is good now.

5 THE COURT: Okay. I -- this -- I'm treating this -- I  
6 know that Mr. Carson is representing himself. He doesn't have  
7 a lawyer on this. I'm treating this as a motion under Rule  
8 60(b) or Bankruptcy Rule 9024 that incorporates it and it seems  
9 to me that given the address issue and the fact that the order  
10 was really entered after the settlement without any --  
11 settlement of the order without any opposition, that Mr. Carson  
12 didn't act willfully here, which was one of the key factors of  
13 the 60(b) analysis.

14 And I think he has asserted a colorable defense to the  
15 underlying motion, which is again, that the claim was late and  
16 therefore, should be disallowed, which is that he was out of  
17 his home when the notice was received and didn't -- this is the  
18 notice of the bar date now we're talking about -- and didn't  
19 get back from Florida until after the bar date passed.  
20 Obviously, that would be tested if the debtors -- if -- I'm  
21 sorry -- if that I went further and said that their order  
22 disallowing the claim should be vacated and then once you  
23 consider under a request under 9006. But on its face, it's at  
24 least a plausible response.

25 So, my inclination is to grant Mr. Carson's request,

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1 treat it as a request under Rule 60(b) and to grant it, which  
2 means not that his claim is allowed but that it's not  
3 disallowed at this point and needs to be dealt with. Frankly,  
4 my thought was that it would be more easily dealt with if it  
5 was a hundred thousand dollar claim as asserted in the letter  
6 objection than the one million dollar figure in the claim  
7 itself. And that may be a factor in my considering the Rule  
8 9006 issue because the notice the debtors had that set forth  
9 Mr. Carson's right address says a hundred thousand dollars.  
10 So, unless I'm missing something -- unless you want to try to  
11 persuade me otherwise, that's where I'm inclined to rule, i.e.,  
12 again to sum it up, I would grant Mr. Carson's request to have  
13 the order vacated that disallowed this claim under Rule 60(b).  
14 And then that leaves the debtors the opportunity to object to  
15 the claim. Well, they've already objected to the claim and  
16 I'll treat the objection as outstanding. And then Mr. Carson  
17 has to convince me that the reason for late filing was  
18 excusable neglect. I'm not going to do that over the phone. I  
19 don't take testimony over the phone. I -- we need to assess  
20 the witness' credibility.

21 So, if this does come up for a hearing, it will be the  
22 evidentiary hearing where I have to actually see Mr. Carson  
23 testify as to, you know, the basis for the lateness of the  
24 original claim. So I'm not going to require him to make a  
25 formal 9006 motion because he's pro se and I'll treat his July

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1 25 -- I'm sorry -- I'll treat his letter that was received on  
2 November 16th, 2009 as a motion for leave to file a late claim  
3 or have the claim be treated late. And the debtor should deal  
4 with that as if their objection was outstanding. So I'll look  
5 for an order from Skadden on that relief.

6 MR. PERL: Is that -- Your Honor, should we put that  
7 on for the next omnibus hearing?

8 THE COURT: I guess you should although I think you --  
9 someone should probably talk to Mr. Carson.

10 MR. PERL: Okay.

11 THE COURT: Mr. Carson, I don't want to spend a lot  
12 more time explaining what I just did because I thought was  
13 fairly clear but -- because I have other people here and other  
14 matters. But let me just summarize it. I've granted your  
15 request to vacate the order that disallowed your claim, which  
16 means that you still have a claim against the debtors.

17 MR. CARSON: Okay.

18 THE COURT: However, that claim hasn't been allowed  
19 yet because the debtors have objected to it and they've  
20 objected on the basis that it was late. There's a rule -- a  
21 bankruptcy rule, Rule 9006(b) that lets someone who filed a  
22 late claim seek an order from the judge deeming that claim to  
23 be timely, to be not late on the basis of excusable neglect.  
24 I'm treating your letter that was received on November 16th,  
25 2009 by the debtors' counsel, as a request to have your late

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1 claim be deemed timely filed under rule 9006 for excusable  
2 neglect. The reason being your statement that you were out of  
3 the state for six weeks dealing with your mother's illness.  
4 That raises a factual issue. I'll need to -- if it's not  
5 settled, need to hear testimony on it, you know, whether that  
6 in fact happened. I need to see you when that happens. I  
7 can't really evaluate testimony over the phone.

8 MR. CARSON: Right.

9 THE COURT: And I need to consider the other factors  
10 that I need to take into account when I have such a motion,  
11 which I outlined in the ruling that just preceded this with the  
12 other company that I dealt with, the first matter on the agenda  
13 today. So that's what going to happen next. I assume someone  
14 from the debtor will contact you about the merits of your  
15 excusable neglect issue and the merits of your underlying claim  
16 and you know, I encourage both sides to consider whether the  
17 matter might be settled, taking into account all the issues,  
18 both the merits of the underlying claim and the merits of the  
19 excusable neglect and including the fact that the letter said  
20 it was a claim for 100,000 dollars and the like. So, if it's  
21 not settled, it will come on for a hearing in which I'll need  
22 to see you up here.

23 MR. CARSON: Okay.

24 THE COURT: And that's where we stand. And there will  
25 be an order submitted by the lawyers for the debtors that lays

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1 that out.

2 MR. CARSON: Okay.

3 THE COURT: Okay?

4 MR. CARSON: Okay, thank you.

5 THE COURT: All right. Thank you.

6 MR. PERL: And Your Honor, as Mr. Lyons points out, we  
7 have quite a few matters up for September so we'll be in touch  
8 with Mr. Carson, inform chambers and then we'll --

9 THE COURT: Okay.

10 MR. PERL: -- schedule that.

11 THE COURT: That's fine.

12 MR. PERL: Thank you. Your Honor, that concludes the  
13 omnibus hearing for today.

14 THE COURT: Okay.

15 MR. PERL: I'm going to turn the podium over to my  
16 colleague, Mr. Lyons to -- for the claims hearing.

17 THE COURT: Okay.

18 MR. LYONS: Good morning, Your Honor. John Lyons on  
19 behalf of the reorganized debtors. Your Honor, we have a  
20 pretty streamlined claims hearing agenda. I think only one  
21 matter is really going to require any arguments so with your  
22 Court's -- with Your Honor's permission, I'll go through the  
23 agenda.

24 THE COURT: Okay. That's fine.

25 MR. LYONS: First, Your Honor, we have item number one

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1 is the claim of Crown Enterprises. That claim has already been  
2 settled and we have already submitted a joint stipulation and  
3 agreed order. So that matter has been resolved.

4 The next item, item number two, is the claim of  
5 Illinois Environmental Protection Agency. The Illinois EPA  
6 filed two proofs of claim, claims number 10884 and 10885. One  
7 was filed against Delphi Corp. and the other was filed against  
8 Delphi Automotive Systems, LLC. Under the plan, both those  
9 estates were, in essence, combined so to avoid duplicative  
10 claims, we propose to just to expunge proof of claim 10884 as  
11 duplicative and leave in 10885.

12 THE COURT: Okay and I've reviewed both claims. They  
13 are identical except for the name of the debtor so I'll grant  
14 that objection --

15 MR. LYONS: Thank you, Your Honor.

16 THE COURT: -- which was unopposed.

17 MR. LYONS: Thank you. Item number three is the same  
18 things at the Illinois EPA except this was filed by the Ohio  
19 EPA and there again, we have three claims -- identical claims,  
20 15345, 15346 and 15437 filed against three different debtor  
21 entities, Delphi Automotive Systems, LLC, Delphi Automotive  
22 Systems Services, LLC and Delphi Corporation. Again, under the  
23 plan, those three have been consolidated. So for the same  
24 reasons as the Illinois EPA claims, we propose to consolidate  
25 and just have one claim remaining that claims -- I'm trying

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1 to -- oh, yeah. The claims that would be expunged would be  
2 15346 and 15347. The surviving claim would be 15345.

3 THE COURT: Okay. And again, I've reviewed all three  
4 of them. They're the same except for the debtors listed. So  
5 for the same reasons as the Illinois DEPO, I'll grant the  
6 debtors' objection to the Ohio EPA.

7 MR. LYONS: Thank you, Your Honor. Item number four  
8 is the claim objection regarding Eoshanda Williams. Ms.  
9 Williams had filed a claim -- actually, it was filed on behalf  
10 of Ms. Williams the Mississippi Workers' Compensation  
11 Individual Self-Insured Guaranty Association, which we  
12 understand is no longer pursuing the claim. Nonetheless, we  
13 did file our various papers and our records indicated that Ms.  
14 Williams, who put in an unliquidated claim through the  
15 Mississippi agency, actually did put an invoice in to the  
16 debtors of 699 dollars which the debtors did pay. And that was  
17 just for an emergency room visit. The debtors did decline her  
18 claim on the merits earlier. There has been no response to the  
19 claim objection and Your Honor, we request -- we also have  
20 submitted the declaration of Mr. Unrue that confirms the  
21 company's belief that there is no claim.

22 THE COURT: I'll grant this claim objection. It's  
23 unopposed and in addition, except for the amount that was  
24 listed in the claim and that was paid, the claimant, who's  
25 really claiming through Ms. Williams, hasn't met its initial

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1 burden to allege sufficient facts to state the claim in the  
2 first place. And consequently, the proof of claim really isn't  
3 entitled to *prima facie* validity under the bankruptcy rules.

4 MR. LYONS: Thank you, Your Honor. Your Honor, I'll  
5 pass item five for the moment and deal with item number six  
6 which is the claim of Lee H. Young.

7 THE COURT: Right.

8 MR. LYONS: Your Honor, this is another claim that was  
9 filed by the Mississippi Worker's Compensation Agency. We did  
10 attach to our reply a settlement release that was executed by  
11 Mr. Lee. This claim has been fully settled.

12 THE COURT: Right.

13 MR. LYONS: And for that reason, we ask it be  
14 expunged.

15 THE COURT: I will grant the objection on that basis.  
16 And again, the objection is unopposed. So you can submit  
17 orders on all four of those. It can be one order. That's  
18 fine.

19 MR. LYONS: Thank you, Your Honor. And the final  
20 item -- and this is the one, which may require some argument,  
21 is item number five which is the claim of the Michigan Funds  
22 Administration. Your Honor, the original claim -- or the  
23 claim, I should say, that is on file by the Michigan Funds  
24 Administration was to collect assessments that were due for the  
25 workers' compensation scheme in Michigan that Delphi owed. It

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1 was calculated for 2008 and 2009 after we took a look at the  
2 claim, we determined that all those payments were actually made  
3 and were paid in full.

4 So in DPH's view, the claim that was filed by the  
5 Michigan Funds Administration has been satisfied in full and  
6 therefore we requested that the claim be expunged. In the  
7 midst of briefing this, Your Honor, which again, we thought  
8 would be rather non-controversial, Michigan then filed an  
9 amended administrative claim, adding to this claim, a liability  
10 for 2009. Your Honor, in our view -- you know, number one, if  
11 they wished to pursue to that action, they should have filed  
12 a motion for leave to amend. They -- instead, Michigan  
13 unilaterally just filed an amended request.

14 In either event, Your Honor, we believe that this is  
15 not a proper basis to amend a claim since it involves a very  
16 distinct year, 2009, whereas the original claim was clearly  
17 just for 2008. There was no language in that -- in the  
18 original request, Your Honor, that, you know, mentioned any  
19 contingent possible claim for 2009. It was clearly, on its  
20 face, just for 2008. And under the cases we cited, Your Honor,  
21 in the brief that we filed yesterday, clearly, the great weight  
22 of courts that have looked at this have found that when you  
23 have liability for taxes, for example, in distinct years, that  
24 that is a new claim and is not an appropriate basis to amend a  
25 claim when the claim to be amended is just for a distinct tax

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1 year.

2 So therefore, Your Honor, we believe amendment isn't  
3 appropriate ere. If Michigan so chooses to file a motion for  
4 leave to file late claim, we'll respond at the appropriate time  
5 but the original request by the debtor is to have that proof of  
6 claim expunged on the basis that it's been satisfied in full is  
7 the relief that we seek.

8 THE COURT: Okay.

9 (Pause)

10 MR. RATERINK: Good morning, Your Honor.

11 THE COURT: Good morning.

12 MR. RATERINK: Dennis Raterink appearing on behalf of  
13 the Michigan Attorney General's office, representing the  
14 Michigan Funds Administration. In terms of this claim, if  
15 you'll indulge me just for a minute to explain a little bit of  
16 the background of the claim itself. The nature is based on the  
17 assessments levied by my clients, the Funds Administration  
18 against Delphi due to its status as being a self-insured  
19 employer in the state of Michigan. It's -- that was the  
20 preliminary paragraph in the request for administrative  
21 payment. The assessments in question are the sole source of  
22 funding for my clients. My clients receive no general funding  
23 from the taxpayers of the state of Michigan. This --  
24 assessments that are levied against either self-insured  
25 employers or insurance companies are the sole source of funding

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1 for them. The assessments are authorized by the statute in the  
2 state of Michigan. The assessments themselves and the  
3 calculations used to determine the amounts of the assessments  
4 are also determined by statute.

5 The formula is fairly complicated and really not  
6 necessary to get into for the purpose of this argument. I will  
7 note however that one of the components to determine the amount  
8 of the assessments on a year-to-year basis is the amount of  
9 paid losses that the company had had in the previous calendar  
10 year and paid losses for the sake of this assessment process is  
11 limited to paid wage loss payments to the injured workers of  
12 Delphi in the state of Michigan. Those amounts are self-  
13 reported to my client on a yearly basis and then used in the  
14 calculation process. The calculation process is then done in  
15 March of every year as was stated in our original request that  
16 the assessments are calculated in March, at the earliest. In  
17 this case, it's even later. For the original assessments --  
18 the original administrative expense claim, we specifically  
19 indicated that for 2008, Delphi itself reported paid losses of  
20 over 24.7 million dollars. Those -- that number -- that paid  
21 loss number is then put into the formula you'd use to determine  
22 the assessments of the three separate funds that make up the  
23 Funds Administration. In the aggregate, the total amount of  
24 those claims was over 1.1 million dollars. Those assessments  
25 were billed to Delphi in June of -- June 25th of 2009. The

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1 original administrative expense claim was filed in July 14th of  
2 2009 and as Mr. Lyons correctly indicated, those assessments  
3 were eventually paid by Delphi on July 29th of 2009.

4 Subsequent to that, when the assessment issue came up  
5 again in 2010 for my client, the Funds Administration, they  
6 again looked to the amounts that Delphi had paid in workers'  
7 compensation benefits for the previous calendar year. However,  
8 Delphi had either failed or refused to submit the voluntary  
9 amount to the paid losses. It is the fund's policy and there  
10 is an affidavit in our papers today to indicate that the fund's  
11 policy is that if no voluntary reporting is done, the Funds  
12 Administration utilizes the prior year's paid losses to form  
13 the assessments for the next year. However in this case, that  
14 twenty-four million was not used because they wanted to  
15 accurately reflect the idea that Delphi ceased to operate as an  
16 ongoing entity with the confirmation of the plan in October of  
17 2009.

18 So that twenty-four million dollars was in fact  
19 apportioned over the period time between January 1st of 2009  
20 and October 6th of 2009. So the new paid loss number that was  
21 used by my client was just over 18.8 million dollars. That  
22 loss figure then is plugged into the formula for the 2010  
23 assessments and again, in the aggregate that those new amounts  
24 are just over 820,000 dollars. Those amounts were billed to  
25 Delphi on May 28th of 2010 and the amended claim was just

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1 recently filed.

2                 If I understand correctly, Your Honor, at this point,  
3 the plaintiffs aren't challenging the basis or the amount of  
4 the claim at this point. The only objection is to the method  
5 in which the claim was filed. Your Honor, the -- Mr. Lyons was  
6 correct; it was filed as an amended request for payment of the  
7 administrative expenses. Your Honor, if the more proper  
8 designation had been a motion to allow for amended request or  
9 amended payment, we would be happy to file that if the Court  
10 would request that or we would just ask that the Court consider  
11 that request as a motion for amended payment. When we talk  
12 about the amendment to the claim, I would point out to the  
13 Court that the decision to permit an amendment of a proof of  
14 claim rests within the sound discretion of the bankruptcy  
15 judge. That would be according to In re McLean 121 B.R. 704  
16 (Bankr. SDNY 1990).

17                 The test that's been utilized by the courts in  
18 determining whether such an amendment should be allowed, goes  
19 back as far as In re G.L. Miller 45 F. 2d 115 (Second Circuit,  
20 1930). The primary focus of that test is whether the initial  
21 claim provided the debtor in possession with reasonable notice  
22 of the later claim. That test has been modified and added to  
23 over the years. I would cite again to In re McLean as one of  
24 the examples so that it's now more of a two-part process.

25                 The first part, looking again to see, is the proposed

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1 amendment reasonably related to that timely filed claim?  
2 Number two, would the granting of the amendment be fair and  
3 impose no undue hardship to any parties? Your Honor, our  
4 argument here is that we had one claim that's an assessment  
5 claim. If we'd have had two years of statistics and actual  
6 amounts, we would have listed them all but it would have been  
7 one claim. In this case, we gave the Court the information  
8 that we had and we also gave the Court information that more  
9 amounts would be coming. We did not use the word "contingent  
10 claim".

11 THE COURT: Where does it say that? I didn't find  
12 that.

13 MR. RATERINK: I will cite right to the original  
14 claim, Your Honor, in several different areas that give the  
15 information and the idea that more claims, more  
16 responsibilities will be due on owing. On page 1 of the  
17 request for administrative payment, it specifically indicates  
18 again, as I've mentioned, that the worker's comp assessments  
19 are based on the self-insured status of the company. No  
20 specific year is mentioned, no year in question of the specific  
21 assessments --

22 THE COURT: I'm sorry. I have -- let me -- I have a  
23 big notebook.

24 MR. RATERINK: Sure.

25 THE COURT: So you have an extra copy so I'm not

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1 fumbling through the --

2 MR. RATERINK: I just have my original. It's got  
3 lines under it but I'd be happy to give it to Your Honor if  
4 you'd like.

5 THE COURT: Well, You're reading -- Does the debtor's  
6 have an extra one?

7 MR. RATERINK: I may have another copy in my notes.

8 THE COURT: Okay. Nope. I -- my crack clerk found  
9 it --

10 MR. RATERINK: Okay.

11 THE COURT: -- in like five seconds so -- all right.

12 MR. LYONS: So that first reference then is page 1,  
13 the first full paragraph that indicates the basis for the claim  
14 stems from the status of Delphi Corporation as a self-insured  
15 employer for purposes of workers' compensation claims in the  
16 State of Michigan. There's no reference to the 2009  
17 specifically at that point. It's just that -- giving the Court  
18 notice, giving everyone notice that that these assessments are  
19 based on Delphi's self-insured status. Page 1 also indicates  
20 that at the time of the original filing at least, that Delphi  
21 continued to be a self-insured employer in the State of  
22 Michigan. That subsequently changed but that was the -- that  
23 was the information at that time.

24 Page 2 of the document, again, indicates, the first  
25 full paragraph, that assessments are calculated in March of

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1 each year. And I should say, just for the record as well, Your  
2 Honor, the assessments for the self-insured period during the  
3 previous years of the bankruptcy had all been paid in due  
4 course. No issues had been raised, no disputes over the  
5 amounts. They had simply been paid just like they had with the  
6 2009 assessment once the documentation was submitted.

7 But the report does indicate that the assessments are  
8 calculated each year. Page 2 also indicates that the  
9 assessments are based on the payment of indemnity after the  
10 petition/commencement date. That would be in the third full  
11 paragraph. Obviously, to anyone reading the information --  
12 reading the brief would know that Delphi had paid assessment --  
13 or had paid indemnity for all of the years after the petition  
14 commencement date.

15 At lastly and probably most importantly, Your Honor on  
16 page 3 of the document at the top paragraph clearly lays out  
17 that furthermore these assessments should be treated as  
18 administrative expenses because the debtor' required to  
19 continue to make payments even after it has stopped being a  
20 self-insured entity. Clearly giving the indication that  
21 further assessments were possible and, in fact, likely.

22 We did not use the word contingent claim anywhere in  
23 there and I will stipulate that the wording could have been  
24 stronger and could have been better in that regard, however,  
25 when you look at what the legal standard is, the legal standard

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1 of providing the debtor-in-possession of reasonable notice of  
2 the later claim, I think it goes fully well enough to satisfy  
3 that burden, fully well enough to let individuals know that  
4 there is a possibility and, in fact likelihood, of more claims.

5 Is this reasonably related? Yes. For all the reasons  
6 I've just stated. Would granting the amendment be unfair or  
7 impose undue hardships? We would, again, argue that it would  
8 not. In the pleadings, the second supplemental proceeding  
9 or -- excuse me -- the second supplemental responses from  
10 debtor, they indicate a couple of issues in that regard. They  
11 claim that they would be prejudiced by the amendment because of  
12 a lack of notice but, in this case, I think Your Honor, that  
13 being required to pay a valid claim would not be prejudice.  
14 It's simply a payment of what's due and necessary.

15 THE COURT: Can I interrupt you?

16 MR. RATERINK: Absolutely.

17 THE COURT: On your -- in respect to your discussion  
18 about the claim that covered 2008 --

19 MR. RATERINK: Um-hum?

20 THE COURT: -- and how it should have alerted people  
21 that there'd also be an amount owing for 2009, how is that  
22 argument different than the notion that there are only two  
23 things in life that you are certain about; death and taxes. I  
24 mean the debtors' right. There are a lot of cases that stand  
25 for the general proposition that taxes assessed on an annual

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1 basis must be asserted. You can't use the amendment rubric to  
2 have them relate back to an original proof of claim.

3 And, you know, people could have reasonably inferred  
4 that Delphi would continue to owe taxes for the rest of 2009  
5 but -- or for 2010 but, you know, this --

6 MR. RATERINK: I would --

7 THE COURT: -- the circuit courts basically say that,  
8 you know, that that's not enough. That you need to -- some  
9 will say that you have to have a very explicit reservation or  
10 some will say even with the reservation it's not enough unless  
11 you actually say that you're also filing a contingent claim  
12 based on some estimation. And here, you know, Michigan did  
13 have a basis to estimate which is what they did with the second  
14 claim.

15 MR. RATERINK: That's actually not correct, I don't  
16 think, Your Honor.

17 THE COURT: No?

18 MR. RATERINK: And can I go back to that a minute?

19 THE COURT: But -- well, yeah. That was a two-part  
20 question.

21 MR. RATERINK: It is.

22 THE COURT: Let's just deal with the first part.

23 MR. RATERINK: Okay. In regards to the tax analogy, I  
24 think there are a couple of issues there. First of all, the  
25 assessments -- this is not just an inference we're asking. We

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1 did not clearly say it's a contingent claim but it's more than  
2 an inference, we would argue, that those -- the further  
3 assessments would be levied. The -- as far as providing an  
4 estimation --

5 THE COURT: But why isn't it just an inference? I  
6 mean, I don't -- it doesn't say that further assessments will  
7 be levied.

8 MR. RATERINK: No, it doesn't. Maybe it's a strong  
9 inference --

10 THE COURT: Okay.

11 MR. RATERINK: -- I guess would be the --

12 THE COURT: All right.

13 MR. RATERINK: -- what I would argue.

14 THE COURT: Okay.

15 MR. RATERINK: Is that there's a strong inference --

16 THE COURT: All right.

17 MR. RATERINK: -- within the pleadings themselves.

18 THE COURT: Okay.

19 MR. RATERINK: As far as the tax cases in particular,  
20 Your Honor, I would ask the Court some leverage or some ability  
21 to respond to those. I just got the pleading this morning --

22 THE COURT: Okay.

23 MR. RATERINK: -- to be honest, regarding those cases.  
24 I can't factually distinguish them because I haven't read them  
25 yet.

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1 THE COURT: All right.

2 MR. RATERINK: They were just first brought to my  
3 attention in those -- in that supplemental pleading. So I  
4 would be happy to respond to that but I'm kind of unable to at  
5 this point. I'd be happy to --

6 THE COURT: Okay.

7 MR. RATERINK: -- in subsequent briefing.

8 THE COURT: All right.

9 MR. RATERINK: As to the second issue about the  
10 estimation idea, the estimation -- it's an incorrect  
11 assumption. Debtors do indicate that we were able to file an  
12 administrative claim for over 5.5 million dollars on behalf of  
13 the self-insured security fund. And that was done. And that  
14 claim is still pending.

15 THE COURT: Oh, I was making a different point.

16 MR. RATERINK: I'm sorry. Okay.

17 THE COURT: When you look at the claim that was filed  
18 in 2010 for 820,000 --

19 MR. RATERINK: Yes.

20 THE COURT: -- and change.

21 MR. RATERINK: Oh, that estimation.

22 THE COURT: Yeah. It basically says we did make this  
23 adjustment because the debtors stopped being self-insured at a  
24 certain point. But the method is one that they acknowledge --  
25 the claim acknowledges where a self-insured employer fails to

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1 provide the required information, the funds administration  
2 estimates the companies losses based on the indemnity benefits  
3 paid out by the company in the previous year. So, you  
4 could've, based upon the 1.3 million dollar claim calculations,  
5 have done that same thing that same day.

6 MR. RATERINK: It's possible. You're right. That  
7 could have been done. The reason it wasn't done is that the  
8 thought process was this claim was general enough to give  
9 notice to the idea of the yearly assessments. That once the  
10 actual assessments were properly calculated that those amounts  
11 would be submitted in an amended claim and that there wouldn't  
12 have to be -- we were hoping that we'd actually get the actual  
13 numbers. We, in the end here, had to do another estimated  
14 claim like I just explained. We were hoping to actually have  
15 the actual reporting though to give a particular amount that  
16 would be accurate and not subject to further litigation or  
17 determination.

18 So that's why it wasn't done at that point in time was  
19 that we felt that we'd had the full ability to amend the claims  
20 later on with the numbers that would be more particular to the  
21 claim. At this point -- you know, in retrospect, it would have  
22 maybe been better to do so. But we felt that enough notice had  
23 been presented at the time to let everyone know that there  
24 would be further assessments and thought we would just wait  
25 until the actual amounts had been determined.

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1 THE COURT: Okay.

2 MR. RATERINK: I don't know if you want me to respond  
3 to debtors' argument about the 5.5 million dollar claim and why  
4 that could have been used or not.

5 THE COURT: Yeah. Sure.

6 MR. RATERINK: Okay. That -- in essence, they're  
7 arguing that since we had been able to come up with a 5.5  
8 million dollar administrative claim on behalf of the self-  
9 insured security fund, that that should have given us the basis  
10 for determining the amounts that may be owed in terms of the  
11 fund's administration assessments. The problem with that is  
12 that the self-insured security fund claim was based on an  
13 estimate of the total amounts of money that the self-insured  
14 security fund would have to pay out over the lifetime of all of  
15 the workers that may fall under the liability -- payment  
16 liability of the self-insured security fund.

17 The assessments are calculated on a paid loss -- on a  
18 year by year basis which is a completely different mechanism.  
19 It's completely different amounts of money. Are we arguing  
20 that it couldn't have been -- we couldn't have put a number in  
21 there, it couldn't have been a reasonable facsimile, we  
22 couldn't have used last year's -- no we're not arguing that.  
23 But the 5.5 million dollars really has no relationship to the  
24 amount of the esti -- to the amount of the assessment  
25 calculation.

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1           In the end, Your Honor, we would argue, Your Honor,  
2 that no one is being prejudiced by this, that -- we will agree  
3 with debtors' argument that there's no windfall to any other  
4 parties. The floodgates argument is used here, as well, as a  
5 potential source of prejudice. Your Honor, we'd argue two  
6 things in regard to the floodgates argument. Number 1, any  
7 claimant that had an allegation of an amended claim would be  
8 subject to the same scrutiny that this case is going through at  
9 this point and there's simply evidence. There may be evidence  
10 of cases in terms of the late filing but this is not a late  
11 filing case; it's an amended -- it's an amended filing case.

12           THE COURT: But if I find that it is late, then -- I  
13 mean, the way I view the second prong of this test on  
14 amendments is that -- it's in essence a wrinkle on 9006. If  
15 the claimant is alleging, notwithstanding that it -- I mean it  
16 seems to me that the first step has to be that it relates back  
17 in which case it's not really late.

18           MR. RATERINK: Correct.

19           THE COURT: So -- and there's a reason why it's the  
20 first step. That's' the first thing you look at. And if it  
21 doesn't relate back, some courts have said you can still  
22 deem -- you know, deem it to be an amendment. But those courts  
23 are ones that, generally speaking, do it on pretty limited  
24 grounds. For example, in the Seventh Circuit case that's cited  
25 a lot, Unroe. The debtor actually scheduled the taxes. So it

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1 was on the schedule. People saw it there, you know? They knew  
2 it.

3 On the other hand, it's often used by courts even  
4 where it was said to relate back, it was still unfair because  
5 it was such a big increase.

6 MR. RATERINK: Oh, okay.

7 THE COURT: You know? And so I'm not sure that it  
8 really changes the analysis much if the first step isn't  
9 satisfied from Pioneer. I mean, I think -- you know, if  
10 someone schedules the claims in their schedules and then gets a  
11 plan confirmed on that basis, it's hard to argue that there's  
12 any prejudice because, you know, the plan was confirmed on that  
13 basis. But I'm not sure that really applies here.

14 MR. RATERINK: Understand. And you're relating it to  
15 the floodgates argument saying that other parties could  
16 potentially try to come in --

17 THE COURT: Well, I would view it basically like, you  
18 know, under Pioneer at that point.

19 MR. RATERINK: Okay. The last argument that had been  
20 raised by debtors is the idea that the funds administration had  
21 not proposed any ration or reason why the amended claim hadn't  
22 been filed earlier or hadn't been filed before the deadline.  
23 Well the reality was the original claim was filed not too long  
24 before the deadline and we simply did not have the information.  
25 If they were looking for the particular estimates, we didn't --

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1 or the particular assessments, we didn't have the information  
2 and that's why we didn't include it in the first round. We  
3 were simply waiting for the accumulation of the information to  
4 amend the claim late at a later time and give the Court the --  
5 as precise number as possible.

6 THE COURT: Okay.

7 MR. RATERINK: Okay. Thank you, Judge.

8 THE COURT: Okay. Thank you.

9 MR. LYONS: Just a couple of very quick points, Your  
10 Honor. You know, I mean, taking a look, even in a fair minded  
11 way, looking at the original proof of claim they filed. I  
12 mean, it was clearly for 2008 and, you know, with all due  
13 respect to counsel, the second paragraph of the original  
14 request said in 2009 the funds administration determined the  
15 amount of Delphi's assessment for each fund. So I mean,  
16 Michigan, in its administrative request, determined the amount  
17 which they thought was owed. There is no language about  
18 potential future adjustments or anything like that.

19 And if you would compare it, Your Honor, against the  
20 amended request that they file, on the third page the second  
21 paragraph, there they very clearly state that -- or reserve the  
22 right that, you know, as loss numbers are possible being  
23 calculated at this time, the funds administration is providing  
24 notice of a contingent claim for more assessments in the  
25 future. So clearly if they were seeking to put in a contingent

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1 claim for late assessment periods, that would be the way to do  
2 it and it was not done in the original administrative request.  
3 So I think that's fairly clear.

4 And again, I think -- you know, Your Honor, if Your  
5 Honor wants to take more briefing, that's fine. I think it is  
6 pretty crystal clear though that this is a distinct period of  
7 time and distinct claim. And again, I think the -- as Your  
8 Honor's identified, you can't use an amendment as a back door  
9 to a bar date. And that's what I think clearly is the case  
10 here.

11 And there would be very real prejudice. You know,  
12 number one, we don't even know what the true assessment amount  
13 is according to the amended request for administrative claim.  
14 Who knows if Michigan doesn't come up with some other  
15 assessments to try to make up for the losses on the untimely  
16 prepetition claim that they filed and Your Honor expunged and  
17 has been affirmed on appeal.

18 So, Your Honor, there's just a real risk here of a  
19 real floodgates argument and prejudice if this amendment is  
20 allowed to stand.

21 THE COURT: Okay.

22 MR. RATERINK: Can I respond just real briefly, Judge.

23 THE COURT: Sure.

24 MR. RATERINK: Two things. As far as the language in  
25 the new claim, I will stand by my argument that we thought the

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1 original claim fully gave notice as to the possibility, and in  
2 fact probability, of further assessments. Obviously, it didn't  
3 sufficiently because it was objected to so it's coming around  
4 this time, we did add further language to make it absolutely  
5 clear beyond a shadow of a doubt that we were asking for that  
6 as well.

7 You know, I do take a little bit of offense on the  
8 idea that my client would make up further assessments --

9 THE COURT: I thought you might but I think it was  
10 like a parade of horribles argument.

11 MR. RATERINK: Okay. The reality is these assessments  
12 are calculated by statutory formula. There's the -- this is  
13 the amount that we use. If anything, the amounts -- if the  
14 claim is allowed to continue and is challenged as to the  
15 accuracy of the amounts, we may have to -- if we actually get  
16 the amount of the information that's voluntarily supplied in  
17 most cases, it could go up, it could go down. I have no idea.  
18 The reality of it is we put the assessment based on the amount  
19 that we had access to at the time.

20 THE COURT: Okay.

21 MR. RATERINK: Thank you.

22 THE COURT: All right. I'm going to take, literally,  
23 just like a two-minute break and then I'll be right back.

24 (Break)

25 THE CLERK: All rise.

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1                 THE COURT: Please be seated. All right. We're back  
2 on the record In re DPH Holdings. I have before me the  
3 objection by the debtors to a proof of claim by the Michigan  
4 Funds Administration. The procedural history of this matter is  
5 a little convoluted and it's worth noting in the context of my  
6 ruling. The Michigan Funds Administration filed an  
7 administrative expense claim on the bar date for such claims,  
8 July 15th, 2009, for amounts owing based on Delphi  
9 Corporation's status as a self-insured employer. That claim  
10 was for \$1,130,191.92.

11                 The proof of claim -- or proof of administrative  
12 expense, to be more accurate, stated that the claim is asserted  
13 pursuant to the Michigan Workers' Disability Compensation Act,  
14 MCL 418.551, and assessments to be made thereunder for amount  
15 of indemnity to be paid in respect to the proceeding year. As  
16 the claim states, assessments are calculated in March of each  
17 year and it's clear from the claim and the argument today that  
18 assessments are calculated and made on an annual basis.

19                 The claim states that in 2009, the Funds  
20 Administrative determined the amount of Delphi's assessment for  
21 each fund which is -- I've noted just now, would be for the  
22 prior year of 2008. And that that amount aggregates the  
23 \$1,130,191.92 asserted in the claim. The claim does not assert  
24 any claim for the 2009 year or reserve the right to do so but  
25 merely lays out the claim as I've described it although it does

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1 generally describe the statute and the obligation of a self-  
2 insured employer such a Delphi to comply with the statute.

3 Delphi does not dispute that claim and it has been  
4 paid. However, in the last week, the Michigan Funds have filed  
5 another claim -- or again, more accurately and administrative  
6 expense claim dated August 23, 2010. This administrative  
7 expense claim is also for amounts under MCL 418.551 that the  
8 Michigan Funds Administration contends is owed by -- or are  
9 owed by Delphi for the period starting with January 1, 2009  
10 through the date that Delphi ceased being a self-insured  
11 employer who would be covered by that statute.

12 Again, the claim states that assessments are  
13 calculated under the statute in March of each year and are in  
14 respect of the preceding year, i.e. that they're done on an  
15 annual basis. Further, the administrative expense claim form  
16 states on page 2 "in circumstances where a self-insured  
17 employer fails to require their required information, the funds  
18 administration estimates the company's losses based on the  
19 indemnity benefits paid out in the previous year. In this  
20 case, in 2008, Delphi reported the sum of \$24,703,648.45 in  
21 workers' compensation indemnity benefits."

22 The August 23 administrative expense claim is premised  
23 upon that same figure prorated through the date October 6th,  
24 2009 when Delphi ceased being a self-insured employer who paid  
25 Michigan workers' compensation benefits. Based on that

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1 proration, the August 23 claim asserts a claim of \$820,654.07  
2 as an administrative expense owed. The claim would be untimely  
3 in this case because it covers the period that is covered by  
4 two administrative claims bar dates established by this Court  
5 in prior orders.

6 First, the Court established an administrative claims  
7 bar date of July 15th, 2009 for any administrative claim that  
8 arose prior to June 1, 2009. That is from the petition date in  
9 October of 2005 through June 1, 2009. The second and claims  
10 bar date order set by the Court set a deadline of November 5th,  
11 2009 for administrative expense claims arising on or after June  
12 1, 2009.

13 The modified Chapter 11 plan for the Delphi debtors  
14 was confirmed on July 30th, 2009 and went effective on October  
15 6th, 2009. As I've stated repeatedly in other hearings dealing  
16 with requests to file late claims, the determination of  
17 allowable administrative claims was an important factor in the  
18 court's consideration whether to approve confirmation of the  
19 modified plan in July of 2009 as well as an important factor in  
20 whether the DIP lenders would, in fact, negotiate the treatment  
21 of their claims which were entitled to a hundred cents on the  
22 dollar as administrative claims as well as being fully -- as  
23 well as being secured on the debtors' assets and agreeing to  
24 provide funding for the feasibility of the plan.

25 Thus the two administrative claims bar dates served a

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1 very important and practical purpose in this case and were not  
2 merely procedural gauntlets. The Michigan Funds Administration  
3 does not seek leave to file a late claim, notwithstanding the  
4 timing of the August 23, 2010 claim in light of the two bar  
5 date orders, but instead has couched that claim as an amendment  
6 of the concededly timely claim for the 2008 year of  
7 \$1,130,191.92. Although this issue came up very recently, the  
8 debtors have responded to the contention that the August 23  
9 claim was merely an amendment of the earlier claim and I  
10 believe have convincingly refuted that assertion that no, this  
11 is a matter of law in fact.

12 The funds administration has requested additional time  
13 to brief the issue of whether the claim is, in fact, an  
14 amendment or a new claim. However, I believe that the standard  
15 in this circuit and generally is clear enough so that I will  
16 not need additional briefing. In addition, I'll note that it  
17 was the Michigan Funds Administration's choice to file the  
18 claim and amended claim and therefore one could assume that it  
19 would have anticipated the response to it by DPH including the  
20 case law that DPH just cited and that the Court had located.

21 On the other hand, although I will issue my bench  
22 ruling today and ask DPH to submit an order, the funds  
23 administration, of course, has its rights under bankruptcy  
24 rules 9023 and 9024 as well as Section 502(j) of the code. But  
25 I believe it's proper to couch its request for additional

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1 briefing in that context as opposed to delaying the ruling on  
2 this matter.

3 The decision to permit an amendment to a proof of  
4 claim rests within the sound discretion of the bankruptcy  
5 judge. In re: McLean Industries Inc., 121 B.R. 704, 708  
6 (Bankr. S.D.N.Y. 1990). And generally amendments to claims are  
7 freely allowed when "the purpose is to cure a defect in the  
8 claim as originally filed, to describe the claim with greater  
9 particularity or to plead a new theory of recovery on the facts  
10 set forth in the original claim." Mainland Co-Generation  
11 Limited Partnership v. Enron Corporation, In re: Enron  
12 Corporation 419 F.3d 115, 130 (2nd Cir. 2005). Quotation  
13 citation omitted.

14 The Court must however "subject post bar date  
15 amendments to careful scrutiny to assure that there was no  
16 attempt to file a new claim under the guise of amendment." Id.  
17 i.e. in particular where if it was a new claim, it would be  
18 late as opposed to relating back to the prior filed claim. A  
19 determination of whether an amendment to a proof of claim is  
20 permissible, requires a two-step inquiry.

21 First, courts examine "whether there was a timely  
22 assertion of a similar claim or demand evidencing an intention  
23 to hold the estate liable." Id. The tests were determining  
24 the foregoing. It's largely the same as the tests governing an  
25 amendment to a pleading under Rule 159C) of the federal Rules

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1 of Civil Procedure so that it dates back to the date of the  
2 original filing.

3 Although it's not clear and in fact probably not the  
4 case that 7015 would specifically apply to a contested matter  
5 with respect to a claim objection. See generally *Id.* and *In re*  
6 Global Crossing Limited

324 B.R. 503, 508 (Bankr. S.D.N.Y.  
7 2005). That is "the Court must decide whether there is a  
8 sufficient commonality of facts between the allegations  
9 relating to the two causes of action to preclude the claim of  
10 unfair surprise, i.e. the claim relates back to the original  
11 pleading. *Id.* See also *In re Integrated Resources Inc.*, 157  
12 B.R. 66, 71 (S.D.N.Y. 1993).

13 Secondly, if the amendment does relate back to the  
14 timely file claim, by analogy at least, to Rule 7015 and the  
15 authorities that I've cited, Court should engage in an  
16 equitable consideration of the particular facts of the case to  
17 determine whether it would be equitable to allow the amendment.  
18 *In re* -- I'm sorry, *Midland Cogeneration* 419 F.3d at 133.  
19 Under that equitable analysis, multiple factors are considered  
20 including one, whether there was undue prejudice to the  
21 opposing party, two, bad faith or dilatory behavior on the part  
22 of the claimant, whether other creditors would receive a  
23 windfall were the amendment not allowed, whether other  
24 claimants might be harmed or prejudiced, the justification for  
25 the inability to file the amendment at the time the original

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1 claim was filed. See Id. And In re McLean Industries Inc., 121  
2 B.R. 704, 708 (Bankr. S.D.N.Y. 1990).

3 The second circuit in the Midland Cogeneration case,  
4 phrased the two prong inquiry as one that would in effect  
5 preclude the second prong if the first prong is not satisfied.  
6 That is the Second Circuit said if the amendment does relate  
7 back, then the Court would consider the particular facts of the  
8 case. Judge Lifland has similarly phrased the two-[art test  
9 twice; in In re Spiegel Ink 337 B.R. 816, 820 (Bankr. S.D.N.Y.  
10 2006) and then in In re Calpine Corporation at least as  
11 reported by the district court in its opinion appearing at 2007  
12 U.S. Dist. LEXIS 86514 at pages 16-21 (S.D.N.Y. November 21,  
13 2007).

14 Nevertheless, in both of those cases as well as in  
15 Midland Cogeneration, although the courts found that the claim  
16 would not relate back as being based on new facts, they  
17 nevertheless went through the second prong analysis. Most  
18 clearly in Midland Cogeneration, the Second Circuit said that  
19 that analysis where the claim does not relate back, you should  
20 essentially be on the Pioneer test grounds as if it was to be a  
21 new proof of claim that was late. Although it noted that there  
22 may well be emphasis in which a claim considered as an  
23 amendment to an arrear filed claim might be permitted and, in  
24 fact, probably should readily be permitted. And further, there  
25 might be instances where even if a claim related back, it

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1 shouldn't be permitted given the factors that I've -- or the  
2 second prong factors that I had previously stated. See 419  
3 F.3d at 133.

4 Based on my review of the applicable case law and the  
5 two proofs of administrative expense claim forms and  
6 attachments filed by the Michigan Funds Administration, I  
7 conclude that it is not satisfied the first prong, that it  
8 would not properly relate back. That is that the August 23  
9 claim would not properly relate back to the July 14th 2009  
10 claim. That is because the claim for the 2009 assessments set  
11 forth in the August 23, 2010 claim is on the face of the  
12 claims, and under the law, clearly a new claim for a new year  
13 and not based on the facts of the assessment set forth in the  
14 July 14th claim.

15 The courts have noted that there is some conflict in  
16 the case law, generally dealing with tax claims, although some  
17 tax claims where they're for unemployment insurance assessments  
18 and the like closely resemble the present claims at issue,  
19 should be treated as separate claims if they are based upon  
20 annual calculations as these claims are. And, there's no clear  
21 reservation of rights or assertion of an unliquidated  
22 contingent claim for the future set forth in the original proof  
23 of claim.

24 The cases taking that position, I believe, are the  
25 better reason cases and the cases that are sometimes cited as

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1 taking a contrary position I believe are generally based upon  
2 different facts where either the original proof of claim made  
3 it clear that the claim was subject to adjustment or the  
4 underlying tax was not one that was calculated on an annual  
5 basis but was instead a running quarterly assessment or  
6 calculation.

7 Therefore, I believe that based upon such cases as In  
8 re Unroe, 937 F.2d 346 (7th Cir. 1991), In re PT-1  
9 Communications Inc., 292 B.R. 482 (Bankr. E.D.N.Y. 2003) and In  
10 re Sage-Dey Inc., 170 B.R. 46 (Bankr. N-D-N-Y 1994) and In re  
11 Limited Gaming of American, Inc., (Bankr. N.D. Okla. 1997) the  
12 August 23, 2010 claim should be viewed as a new claim for the  
13 new 2009 assessment year. This is distinguishable, therefore,  
14 from the claims that were deemed to related back in Industrial  
15 Commission on New York V. Schneider 162 F.2d 847 (2d Cir. 1947)  
16 for the reasons discussed by the Court in In re Sage-Dey Inc.

17 More than arguable, that should end the inquiry under  
18 the Midland Cogeneration case. However, as the courts did in  
19 Midland Spiegel and Calpine, and as some of the courts that  
20 I've -- some of the decisions that I've just cited have done, I  
21 have also considered the second prong of the test  
22 notwithstanding that this should not be viewed as amendment but  
23 rather as a new claim. And I believe, based upon the facts,  
24 that those equitable considerations which Midland says where  
25 the claim is late, should, for all intensive purposes, follow

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1 Pioneer would not permit the claim to be treated as an  
2 amendment.

3 First and most important I believe it was within --  
4 well within the funds administration's control to file the  
5 claim for 2009 within the -- either of the two bar dates set by  
6 the Court, either the July 15th bar date or the November 5th,  
7 2009 bar date. As the claim itself recognizes, the funds  
8 administration is capable of estimating the amount of the claim  
9 based on the prior year's losses which it had already addressed  
10 in the July 14th, 2009 claim.

11 Moreover, even if it couldn't have done that, it could  
12 have filed a contingent and unliquidated claim in which case  
13 the amendment would have been -- the amendment that would  
14 have filled in the numbers would have been regularly treated as  
15 an amendment unless those numbers were way beyond reasonable  
16 expectations. Instead, the funds administration waited until  
17 August 23 of this year to file the claim which was obviously  
18 many months after the second bar date and over a year after the  
19 first one as well as many months after the effective date of  
20 the plan and over a year after the approval of the confirmation  
21 of the amended plan.

22 Moreover, the Pioneer factors, as the finds  
23 administration knows, would argue strongly against allowing the  
24 claim to be deemed timely filed at this time given that the  
25 timing of the claim, as I've just described, was well within

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1 the fund administration's control given the delay and given the  
2 potential prejudice to the debtor and creditors because a  
3 timely administrative claim for 2009 was not asserted. See  
4 generally Midland Cogeneration 419 F.3d 115 as well as this  
5 court's -- a district court's ruling on other claims asserted  
6 in this case on an untimely basis by the funds administration.

7 See also In re Delphi Corporation 2009 Bankr. LEXIS  
8 571 (Bankr. S.D.N.Y. January 20, 2009) where the court noted  
9 that uncertainty by a claimant in this type of situation as to  
10 the amount of its claim or even, in fact, whether it has a  
11 valid claim, is not a sufficient basis for the claimant's  
12 failure to file a timely claim in the face of a bar date notice  
13 that states that all claims, including contingent and  
14 unliquidated claims, would be barred if not timely asserted.  
15 Again, here the claim was readily calculatable on an estimated  
16 basis as well as being assertable on contingent and  
17 unliquidated basis and it wasn't.

18 Similar arguments were raised by the claimant in In re  
19 Spiegel 337 B.R. 816 and found not to be persuasive under the  
20 second prong of the amendment test by Judge Lifland who saw no  
21 basis for the claimant to have waited as long as it did to file  
22 the second claim, ostensibly on the basis that it was waiting  
23 to calculate the exact amount of damages.

24 So, I will deny the request to have the August 23,  
25 2010 claim deemed an amendment. Technically, there is no

1 request before me to have that claim be deemed a late filed  
2 claim -- a timely filed claim, excuse me -- notwithstanding  
3 that it's late under Rule 9006 although, as I've noted, after  
4 Midland, the Pioneer analysis does seem to dovetail into the  
5 second prong of the amendment analysis and having applied it, I  
6 conclude that there's no basis to deem the second claim an  
7 amendment to the timely first claim that would relate back to  
8 that date.

9                 So, I guess the funds administration would be free to  
10 file a request under Rule 9006(b) with respect to the August 23  
11 claim but the debtors' right under the doctrines of both claim  
12 and issue preclusion are fully preserved if such a motion would  
13 be made. So, in light of that ruling, the debtor should submit  
14 an order that provides for the disallowance of the August 23  
15 claim as being untimely and not an amendment, obviously, to the  
16 prior claim.

17                 MR. LYONS: Very good, Your Honor. And we'll also add  
18 the expungement of the original claims since that's been paid.

19                 THE COURT: Well, that's been paid so I think  
20 that's -- yeah, that's fine.

21                 MR. LYONS: Okay. Very good.

22                 MR. RATERINK: Thanks, Judge.

23                 THE COURT: Okay. Thank you.

24                 MR. LYONS: Just two quick housekeeping matters, Your  
25 Honor. We are now winding down the claims process as you can

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1 see. We have about 120 administrative claims and 80  
2 prepetition claims so we're coming to the end. And as a matter  
3 of fact, we intend to file a motion to close about twenty of  
4 the cases since those cases no longer have any claims or -- and  
5 so therefore could be closed under the --

6 THE COURT: Okay.

7 MR. LYONS: -- under the local rule. Also, September  
8 looks to be a pretty busy day for claims.

9 THE COURT: This is the other 123 that I'm going to  
10 deal with?

11 MR. LYONS: Yeah. Not all 123 but we may need a  
12 spillover date. We, you know, don't want to tie up the Court's  
13 calendar unnecessarily but --

14 THE COURT: That's fine. You should get one. One or  
15 more.

16 MR. LYONS: Okay. Very good.

17 THE COURT: As you could see, as a practical matter on  
18 disputed claims, I can pretty much deal with two or three.

19 MR. LYONS: Right.

20 THE COURT: But that's about it.

21 MR. LYONS: Right. That's what we've been trying to  
22 do.

23 THE COURT: Okay.

24 MR. LYONS: Okay. Thank you, Your Honor. That's all  
25 I have.

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1 THE COURT: Okay.

2 MR. RATERINK: Thanks.

3 THE COURT: We're off the record now.

4 (Proceedings concluded at 12:36 p.m.)

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RULINGS

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Page Line

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Excellus Health Plan, 20 2

7

Inc.'s motion for late

8

Filing, Denied

9

10 Mr. Carson's motion to 27 13  
11 vacate the order that  
12 disallowed his claim,  
13 Granted

14

15 Reorganized debtors' 31 14  
16 objection to claim  
17 number 10884 as  
18 duplicative, Granted

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20 Reorganized debtors' 32 6  
21 objection to claims  
22 numbered 15346 and 15347  
23 as duplicative, Granted

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7 Reorganized debtors' 32 22  
8 objection to Eoshanda  
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11 Reorganized debtors' 33 15  
12 objection to Lee H.  
13 Young's claim, Granted

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2 C E R T I F I C A T I O N

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4 I, Sara Bernstein, certify that the foregoing transcript is a  
5 true and accurate record of the proceedings.

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7 \_\_\_\_\_

8 Sara Bernstein

9

10 Veritext

11 200 Old Country Road

12 Suite 580

13 Mineola, NY 11501

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15 Date: August 30, 2010

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